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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHEN: September 26, at 9:00 am
WHERE: Denver Federal Center, Building 20 (E8 entrance on 2nd Street) Conference Room B1409, Denver, CO
RESERVATIONS: Federal Information Center 1-800-359-3997

WASHINGTON, DC

WHEN: September 30, at 9:00 am
WHERE: Office of the Federal Register First Floor Conference Room 1100 L Street, NW, Washington, DC
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Presidential Documents

Title 3—

The President

Proclamation 6331 of September 4, 1991

Gold Star Mother's Day, 1991

By the President of the United States of America

A Proclamation

We Americans can never forget the brave and selfless individuals who have given their lives for our country. Indeed, this year alone has given us several poignant reminders of the debt that we owe to each of them. While the 200th anniversary of our Bill of Rights has renewed our appreciation for the blessings of liberty, the war in the Persian Gulf has deepened our gratitude toward those who have died to win them. On this occasion, however, we honor the mothers of our Nation's fallen. Known as Gold Star Mothers, these women have shared in the sacrifices of their children, and they deserve a commensurate portion of our respect and thanks.

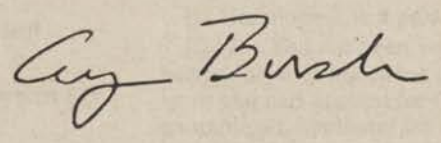
Any parent who has ever suffered the loss of a son or daughter knows that when that child dies, a part of oneself dies too. Accordingly, our Nation's Gold Star Mothers understand the value of liberty because they have borne part of the price that has been paid to defend it. Today many Gold Star Mothers are demonstrating their enduring love of freedom through generous voluntary efforts in their communities—including special efforts in behalf of veterans and active duty service members.

Although we set aside this day in their honor, let us pay tribute to our Nation's Gold Star Mothers throughout the year by assuring them—through word and deed—that their children's sacrifices are remembered and appreciated. Let us continue working to promote respect for human rights and the rule of law around the world, and let us pray for lasting peace among nations, so that no more Americans might die in battle, and so that no more mothers might face war's bereavement.

The Congress, by Senate Joint Resolution 115 (June 23, 1936), designated the last Sunday in September as "Gold Star Mother's Day" and authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 29, 1991, as Gold Star Mother's Day. I call on all government officials to display the United States flag on government buildings on this day. I also urge the American people to display the flag and to hold appropriate meetings in their homes, places of worship, or other suitable places, as a public expression of the sympathy and the respect that our Nation holds for its Gold Star Mothers.

IN WITNESS WHEREOF, I have hereunto set my hand this 4 day of September, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

RIN 3206-AD48

Retirement; Court-Ordered Retirement Benefits

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing as final rules, portions of the proposed regulations published December 30, 1986, to establish age 18 as the age for direct payment of survivor annuity benefits and to clarify terminology in the Civil Service Retirement law. The changes will simplify payment of benefits under the Civil Service Retirement System (CSRS). The remainder of the proposed regulations—primarily the procedure for processing court orders and cases involving competing claimants—is being withdrawn. A new proposed procedure for processing such cases will be published at a later date.

EFFECTIVE DATE: These regulations are effective October 9, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia A. Rochester, (FTS) 266-0777 or (202) 606-0777, Extension 207.

SUPPLEMENTARY INFORMATION: On December 30, 1986, we published (at 51 FR 47021) proposed regulations specifically defining certain terms in the retirement law, establishing age 18 as the minimum age for direct payment of benefits regardless of the age of majority in the claimant's place of residence, and establishing procedures for processing cases involving competing claimants (§ 831.109(g) of title 5, Code of Federal Regulations) and cases involving court orders affecting benefits payable from the Fund (Subpart Q of part 831 of title 5, Code of Federal Regulations). Interested parties were given 30 days to submit comments on the proposed regulations.

We received only two comments on the proposal. None of the comments related to the sections finalized in this publication. The comments primarily concerned the proposed procedural changes to the court order regulations. Since the procedural changes in our proposed regulations are being withdrawn and a new proposal is to be published separately, the comments on our proposed court order procedures will be discussed in the new proposed regulations. We did not make any major substantive changes to the final regulations that would change the way the definitions affect benefits; however, we made several changes and additions we believe were necessary to clarify the provisions.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these rules will not have a significant economic impact on a substantial number of small entities because the rules will only affect retirement payments to retired Government employees and spouses.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

PART 831—RETIREMENT

Accordingly, OPM is amending 5 CFR part 831 as follows:

Subpart A—Administration and General Provisions

1. The authority citation for part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.503 also issued under sec. 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.621 also issued under sec. 201(d) of the Federal Employees Benefits Improvement Act of 1986, Public Law 99–251; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and sec. 6001, Public Law 100–203.

2. New §§ 831.112 and 831.113 are added to read as follows:

§ 831.112 Definitions of employee.

(a) *Determinations involving an employee's ability to make a deposit or redeposit.* A person may make a deposit or redeposit under section 8334 of title 5, United States Code, if he or she is an "employee." For purposes of this paragraph, an employee is—

(1) A person currently employed in a position subject to the civil service retirement law; or

(2) A former employee (whose annuity has not been finally adjudicated) who retains civil service retirement annuity rights based on a separation from a position in which retirement deductions were properly withheld and remain (or have been redeposited in whole or in part) in the Civil Service Retirement and Disability Fund.

(b) *Determinations involving the payment of survivor benefits at an employee's or former employee's death.* To determine entitlement to survivor benefits, OPM establishes whether the deceased individual was an "employee" or a "retiree" on the date of death. If the decedent was an "employee" on the date of death, survivor benefits are paid as though the individual died in service. If the decedent was a "retiree" on the date of death, survivor benefits are only paid as provided in the individual's election, provided it was properly made. However, if a former employee was eligible only for a deferred annuity at age 62, survivor benefits are only paid if the individual was a "retiree" on the date of death. For purposes of this paragraph—

(1) "Employee" is a person—

(i) Who had not been separated from service prior to his or her death, even if he or she had applied for retirement (for example, an applicant for disability annuity) and the application had been approved; or

(ii) Whose death occurs before the commencing date of annuity, even though separation has occurred.

(2) "Retiree" or "annuitant" is a person—

(i) Who has been separated from service and met all the requirements to receive an annuity including having filed an application for the annuity prior to his or her death; and

(ii) Whose death occurs on or after the commencing date of annuity.

(c) *Determinations involving the requirement of spousal consent for elections of alternative annuity and survivor annuity benefits.* Spousal consent is required as specified in §§ 831.607 and 831.2203(c), if the employee/annuitant is married on the commencing date of annuity, regardless of whether that date is before or after the date of separation from service.

§ 831.113 Payments to children.

For purposes of section 8345(e) of title 5, United States Code, persons who have attained age 18 are considered adults regardless of the age of majority in the jurisdiction in which they reside.

Subpart Q—Court Orders Affecting Civil Service Retirement Benefits

3. In § 831.1703, the definition of "Associate Director" is revised to read as follows:

§ 831.1703 Definitions.

* * * * *

Associate Director means the Associate Director for Retirement and Insurance in the OPM or an OPM official authorized to act on his or her behalf.

* * * * *

[FR Doc. 91-21502 Filed 9-6-91; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 916

[Docket No. FV-91-280FR]

Nectarines Grown in California; Modification of Size Requirements for Nectarines for the 1991 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (Department) is adopting without modification, as a final rule an interim final rule which temporarily relaxed minimum size requirements established for the April Glo nectarine variety to "108" size. Prior to the relaxation, shipments of April Glo variety nectarines before May 31 of each year were subject to the more restrictive "96" size requirements in effect for non-variety-specific nectarines. Examinations of April Glo nectarines in the Coachella Valley and in other areas of California indicated that such fruit would not develop to the "96" size level. The size characteristics for April Glo nectarines grown this year were expected to be identical to those of other varieties produced in the valley and other parts of the State which are subject to less restrictive size requirements. Additionally, this was the first year of sizable production for April Glo nectarines and total shipments throughout the State did not exceed 10,000 packages.

EFFECTIVE DATE: October 9, 1991.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, F&V, AMS, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 475-3919.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 916 (7 CFR part 916) regulating the handling of nectarines grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 245 handlers of nectarines are subject to regulation under the nectarine marketing order (7 CFR part 916). Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $3,500,000. There are about 740 producers of nectarines in the regulated area. Small agricultural producers have been defined by the SBA as those having annual receipts of less than $500,000. The majority of these handlers and producers may be classified as small entities.

Shipments of California nectarines are regulated by grade, maturity, and size under Nectarine Regulation 14 (7 CFR 916.356) as amended and published in the **Federal Register** each year at the beginning of the marketing season. Because these regulations do not change substantially from season to season, they have been issued on a continuing basis subject to amendment, modification, or suspension as may be recommended by the Nectarine Administrative Committee (committee) and approved by the Secretary. Inspected shipments of California nectarines for the 1990 season totaled 18,443,100 packages. Such shipments were marketed primarily in the fresh market.

In recognition that larger-sized nectarines provide greater consumer satisfaction than those of smaller sizes, the committee recommended, and the Secretary has approved, minimum size limits for nectarines. However, because of both seasonal and varietal influences which affect average fruit sizes by variety, different minimum size regulations have been issued for different varieties. Smaller minimum sizes generally have been mandated for earlier maturing varieties, while later maturing varieties, since they tend to attain a larger size at maturity, have been required to meet larger minimum sizes.

The interim final rule (56 FR 22106, May 14, 1991) was based upon a unanimous recommendation of the committee and other available information. It provided for filing written comments through June 13, 1991. No comments were received. That rule relaxed the minimum size requirements specified in subparagraphs (a)(6), (a)(7), (a)(8) of § 916.356 by exempting the shipment of April Glo nectarines from those requirements and added a new subparagraph (a)(9) specifying that April Glo variety nectarines shipped during the 1991 season must be at least "108" size. Such nectarines are of a size that, when packed in molded forms (tray pack) in a No. 22D standard lug box, will pack, in accordance with the requirements of standard pack, not more than 108 nectarines in a lug box; or are of a size that, in any other container, a 16-pound sample, representative of the nectarines in the package or container,

contains not more than 92 nectarines. In the absence of these changes, April Glo nectarines would have had to meet the more restrictive size requirements specified in subparagraphs (a)(6), (a)(7), and (a)(8) of § 916.356.

The April Glo nectarine is a new variety in its first year of sizable production. Orchard examinations indicated that April Glo nectarines would not develop to size levels necessary to meet the tighter size requirements.

About 30 to 40 percent of the crop in the Coachella Valley was expected to be "108" size. The total crop in the valley was expected to be about 5,000 containers. The percentage of the crop failing to meet the "96 size" in other parts of the State was expected to be lower, but large enough to warrant relaxation of the minimum size requirement. The total crop for California was not expected to exceed 10,000 packages. Therefore, for the 1991 season, the committee recommended that any shipments of April Glo variety nectarines, be subject to the less restrictive "108" size.

This relaxation allowed shipment of the 108 size only in 1991 in that further evaluation of this new variety's sizing characteristics will be conducted in the Coachella Valley and other areas of the State. The action continued to assure fairness in the application of the non-variety-specific size requirements for the April Glo variety and should not be detrimental to the industry's goal of marketing better quality, larger size fruit, since less than 10,000 packages of April Glos were shipped in 1991.

Based on available information, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the committee's recommendation, and other information, it is found that this action will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 916 is amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 916 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of § 916.356, published in the **Federal Register** (56 FR 22107, May 14, 1991) is adopted as a final rule without change.

Note: This section will appear in the annual Code of Federal Regulations.

Dated: September 3, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–21511 Filed 9–6–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 280

[INS No. 1437–91]

RIN 1115–AC62

Imposition and Collection of Fines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: Section 280 of the Immigration and Nationality Act (Act) and 8 CFR part 280 provide authority to impose fines, receive bonds, etc. The Immigration Act of 1990 (IMMACT 1990), Public Law 101–649, 104 Stat. 4978, amended the Act by revising and adding fine amounts to various sections of the Act, as well as providing authority to the Commissioner of the Immigration and Naturalization Service to receive bonds pending determination of the question of liability for the payment of any fine. This rule amends title 8 of the Code of Federal Regulations part 280 to conform with the changes enacted by IMMACT 1990.

EFFECTIVE DATE: This final rule is effective September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Kathryn Sheehan, Director, Enforcement Implementation Team, Immigration and Naturalization Service, 425 I Street, NW., room 7252, Washington, DC 20536, telephone (202) 514–4120.

SUPPLEMENTARY INFORMATION: Section 542 of IMMACT 1990 directed that the increase in penalties collected resulting from the amendments made by sections 203(b) (increasing penalties on the performance of certain longshore work by alien crewmen), 543(a) (increasing certain civil penalties), and 544 (establishing civil penalties for document fraud) of IMMACT 1990 be credited to the Immigration and Naturalization Service appropriation for activities that enhance enforcement including the identification, investigation, and apprehension of criminal aliens, the implementation of the system described in section 242(a)(3)(A), and the repair, maintenance, or construction on the United States border, in areas experiencing high levels of apprehensions of illegal aliens, of structures to deter illegal entry into the United States; and the Executive Office for Immigration Review appropriation for the purpose of removing the backlogs in the transcripts of deportation proceedings.

The amendments made by sections 203(b), 543(a) and 544 of IMMACT 1990 not only changed or created fine amounts, but with the exception of the amendments made to sections 231(d), 237(b), 254(a), 257, 271(a), 273(b) and 274C of the Act, also authorized the Commissioner of the Immigration and Naturalization Service to receive bonds pending determination of the question of liability for the payment of any fine, or while the fine remains unpaid. On June 6, 1991, an interim rule with request for comments was published in the **Federal Register** at 56 FR 26019–26020, which amended the pertinent sections of 8 CFR part 280 to reflect this change in authority.

The interim rule also amended 8 CFR part 280 as it pertained to the payment, collection and deposit of fines and penalties under sections 280 and 286 of the Act.

The comment period for the interim rule ended on July 8, 1991. The Service did not receive any comments.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have significant adverse economic impact on a substantial number of small entities. This rule is not a major rule as defined in section 1(b) of E.O. 12991, nor does this rule have Federalism implications warranting the preparation of the Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 280

Administrative practice and procedure, Immigration, Penalties.

Accordingly, the interim rule amending 8 CFR part 280 which was published at 56 FR 26019–26020 on June 6, 1991, is adopted as a final rule without change.

Dated: July 30, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-21477 Filed 9-6-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-59; Special Conditions No. 25-ANM-48]

British Aerospace (Commercial Aircraft) Ltd. Model 4100 Series Airplanes; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the British Aerospace (Commercial Aircraft) Ltd. Model 4100 series airplanes. These airplanes are equipped with high-technology digital avionics systems that perform critical or essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

EFFECTIVE DATE: October 9, 1991.

FOR FURTHER INFORMATION CONTACT: William Schroeder, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055-4046; telephone (206) 227-2144.

SUPPLEMENTARY INFORMATION:

Background

On May 24, 1989, British Aerospace (Commercial Aircraft) Ltd. applied for a type certificate for their new Model 4100 series airplanes. The Model 4100 is a pressurized, 29-passenger plus one cabin attendant, airplane with a maximum takeoff gross weight of 22,377 pounds, a maximum cruise speed of 250 knots, and a maximum operating altitude of 26,000 feet. It is powered by two Garrett TPE331-14GR/HR turbopropeller engines mounted one on each wing in tractor configuration. This airplane incorporates a number of novel or unusual design features, such as digital avionics including, but not necessarily limited to, an electronic flight instrument system (EFIS), attitude and hearing reference system (AHRS), light emitting diode (LED) displays for engine parameters, and engine hydro-mechanical fuel control units coupled with integrated electronic controls (IEC's). The IEC employs digital electronics that provide numerous supervisory and trim functions, including an automatic takeoff thrust control system (ATTCS) and propeller control system features such as autofeather and auto-shutdown. All such design features may be vulnerable to lightning and high-intensity radiated fields (HIRF) external to the airplane. In addition to these novel or unusual design features, the Model 4100 series also incorporates other unrelated novel or unusual design features. Those features are the subject of separate special conditions.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, British Aerospace (Commercial Aircraft) Ltd. must show that the Model 4100 series meets the applicable provisions of part 25, as amended by Amendments 25-1 through 25-66. In addition, compliance with the noise certification requirements of part 36 of the FAR and the engine emission requirements of part 34 of the FAR, through the latest amendments in effect at the time of awarding the type certificate, must be shown. These special conditions form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Model 4100 series because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection: One for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning could prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it could significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Model 4100 series which require that new technology electrical and electronic systems, such as the electronic flight instrument system (EFIS), attitude and heading reference system (AHRS), LED display for engine parameters, and supervisory digital engine control, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with these special conditions, a clarification of the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20-136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20-53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding,

airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 50μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H)

These components are defined by the following double exponential equation:

$$i(t) = I_o (e^{-at} - e^{-bt})$$

where;

t = time in seconds,

i = current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp =	218,810	109,405	54,703	10,572
a, sec^{-1} =	11,354	22,708	22,708	187,191
b, sec^{-1} =	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics;

i peak =	200 KA	100 KA	50 KA	10 KA
and				
$(di/dt)_{max}$ (amp/sec) =	1.4×10^{11} @t = 0+sec	1.4×10^{11} @t = 0+sec	0.7×10^{11} @t = 0+sec	2.0×10^{11} @t = 0+sec
(di/dt), (amp/sec) =	1.0×10^{11} @t = .5μs	1.0×10^{11} @t = .25μs	0.5×10^{11} @t = .25μs	
Action integral (amp^2 sec) =	2.0×10^6	0.25×10^6	$.0625 \times 10^6$	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established. It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz-500 KHz	80	80
500 KHz-2 MHz	80	80
2 MHz-30 MHz	200	200
30 MHz-100 MHz	33	33
100 MHz-200 MHz	33	33
200 MHz-400 MHz	150	33
400 MHz-1 GHz	8,300	2,000
1 GHz-2 GHz	9,000	1,500
2 GHz-4 GHz	17,000	1,200
4 GHz-6 GHz	14,500	800
6 GHz-8 GHz	4,000	666
8 GHz-12 GHz	9,000	2,000
12 GHz-20 GHz	4,000	509
20 GHz-40 GHz	4,000	1,000

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Airworthiness Authorities.

Discussion of Comments

Notice No. SC-91-7-NM for the British Aerospace (Commercial Aircraft) Ltd. Model 4100 series airplanes was published in the **Federal Register** on June 24, 1991 [(56 FR 28723)]. One commenter responded to the request for comments. This commenter, representing the safety interests of professional airline pilots, supports the special conditions as proposed.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 *et seq.*; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued to British Aerospace as part of the type certification basis for the British Aerospace (Commercial Aircraft) Ltd. Model 4100 series airplanes:

1. Lightning Protection

a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF)

Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. The Following Definitions Apply With Respect to These Special Conditions

Critical Function. Functions whose failure could contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure could contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on August 29, 1991.

David G. Hmiel

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-21487 Filed 9-6-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 21 and 25

[Docket No. NM-57; Special Conditions No. 25-ANM-47]

Special Conditions: Fokker Model F27 Mark 500 Airplane; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Fokker Model F27 Mark 500 airplane modified by Flight Dynamics, Inc. This airplane is equipped with a high-technology digital avionics system, the Head-up Guidance System (HGS), that performs critical and essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of this system from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to ensure that the critical and essential functions that the HGS performs are maintained when the airplane is exposed to lightning and HIRF.

EFFECTIVE DATE: October 9, 1991.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, FAA, Flight Test and Systems Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4046; telephone (206) 227-2135.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1990, Flight Dynamics, Inc., 16600 SW 72nd Ave., Portland, Oregon 97224, applied for a supplemental type certificate to modify a Fokker Model F27 Mark 500 airplane. The Fokker Model F27 Mark 500 is a two-crew, two-engine, turbopropeller airplane with a maximum takeoff weight of approximately 45,000 lbs. The modification incorporates the installation of a Head-up Guidance System (HGS) for manually flown Category IIIa operations. The HGS originally installed in this airplane was certified for Category I and II operations. The HGS performs both critical and essential functions that may be vulnerable to lightning and high-intensity radiated fields external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.115, subpart C, of the FAR, Flight Dynamics, Inc. must show that the modified Fokker Model F27 Mark 500 meets the regulations incorporated by reference in Type Certificate No. 817, as specified in § 21.101(a), unless: (1) Otherwise specified by the Administrator; (2) compliance with later effective amendments is elected or required under § 21.101 (a) or (b); or (3) special conditions are prescribed by the Administrator.

The regulations incorporated by reference in Type Certificate Data Sheet No. 817 for the Fokker Model F27 Mark 500 are: Part 4b of the Civil Air Regulations (CAR), as amended by Amendment 4b–1, Amendment 4b–2 (items 1 and 48), Amendment 4b–3 (items 21 through 33 and 39), Amendment 4b–7, and Amendment 4b–8 (items 9, 21, and 22). In addition, the certification basis includes certain portions of Special Regulation (SR) 422B and special conditions, none of which are pertinent to the present installation.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 4b plus applicable part 25 requirements) do not contain adequate or appropriate safety standards for the Model F27 Mark 500 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection: One for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic Systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Fokker Model F27 Mark 500 that require that the HGS be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with the special conditions, clarification of the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depends upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke*: (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level.

2. *Multiple Stroke Flash*: (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

3. *Multiple Burst*: (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 50μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$i(t)=I_o(e^{-at}-e^{-bt})$

Where:

t = time in seconds,

i = current in amperes, and

	Severe Strike (Component A)	Restrike (Component D)	Multiple Stroke (½ Component D)	Multiple Burst (Component H)
I_o, amp =	218,810	109,405	54,703	10,572
a, sec^{-1} =	11,354	22,708	22,708	187,191
b, sec^{-1} =	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics;

i_{peak} =	200 KA	100 KA	50 KA	10 KA
and $(di/dt)_{max}$(amp/sec) =	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec) =	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	
Action Integral (amp^2 sec) =	2.0×10^{6}	0.25×10^{6}	$.0625\times10^{6}$	

High-Intensity Radiated Fields

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the HGS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz-500 KHz	80	80
500 KHz-2 MHz	80	80
2 MHz-30MHz	200	200
30 MHz-100 MHz	33	33
100 MHz-200 MHz	33	33
200 MHz-400 MHz	150	33
400 MHz-1 GHz	8,300	2,000
1 GHz-2 GHz	9,000	1,500
2 GHz-4 GHz	17,000	1,200
4 GHz-6 GHz	14,500	800
6 GHz-8 GHz	4,000	666
8 GHz-12 GHz	9,000	2,000
12 GHz-20 GHz	4,000	509
20 GHz-40 GHz	4,000	1,000

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the United States. It will also be adopted by the European Joint Airworthiness Authorities.

Discussion of Comments

Notice of Proposed Special Conditions No. SC-91-5-NM for the Fokker Model F27 Mark 500 airplane was published in the **Federal Register** on May 22, 1991 (56 FR 23527). No comments were received, and the special conditions are adopted as proposed.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, the following special conditions are issued as part of the supplemental type certification basis for the modified Fokker Model F27 Mark 500 airplane:

1. Lightning Protection

a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF)

Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to externally radiated electromagnetic energy.

3. The following definitions apply with respect to these special conditions:

Critical Function. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure could contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on August 28, 1991.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-21488 Filed 9-6-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-41-AD; Amdt. 39-8024; AD 91-18-20]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-7 series airplanes, which requires an inspection for cracks, and overhaul or replacement of the main landing gear upper drag strut assembly. This amendment is prompted by reports of recent incidents involving fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal. This condition, if not corrected, could result in the failure of the main landing gear. This action is consistent with the recommendations of the Airworthiness Assurance Task Force assigned to review the de Havilland Model DHC-7 series airplanes, which indicated that, to assure long term continued operational safety, the drag strut should be overhauled.

DATES: Effective October 15, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 15, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Casale, New York Aircraft Certification Office, Airframe Branch, ANE-172; telephone (516) 791-6220. Mailing Address: FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain de Havilland Model DHC-7 series airplanes, which requires inspection for cracks, and overhaul or replacement of the main landing gear upper drag strut assembly, was published in the **Federal Register** on May 24, 1991 (56 FR 23813).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 27 de Havilland Model DHC-7 series airplanes of the affected design in the worldwide fleet. It is estimated that 14 airplanes of U.S. registry will be affected by this AD, that it will take approximately 150 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. Replacement parts costs are negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $115,500.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the rules docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-18-20. **Boeing of Canada, Ltd., De Havilland Division:** Amendment 39-8024. Docket No. 91-NM-41-AD.

Applicability: Model DHC-7 series airplanes, Serial Numbers 1 through 27, certificated in any category.

Compliance: Required, as indicated, unless previously accomplished.

To prevent a possible failure of the main landing gear (MLG), accomplish the following:

(a) Within one year after the effective date of this AD, remove each MLG upper drag strut assembly from the airplane and perform a non-destructive test in accordance with the Accomplishment Instructions, paragraphs 2.D.(1) through (3), of Menasco Canada, Ltd., Service Bulletin No. 32-18, Revision 1, dated June 5, 1980.

(1) If there is no evidence of cracking, prior to further flight, overhaul the assembly in accordance with the Accomplishment Instructions, paragraph 2.D.(4), of the service bulletin.

(2) If cracking is evident, prior to further flight, replace the assembly with a serviceable part, in accordance with the service bulletin.

Note: The Menasco Canada, Ltd., Service Bulletin references Menasco Mfg. Component Maintenance Manual 32-10-16, dated September 1, 1976, as an additional source of service information for performing overhaul procedures.

Note: In the referenced Menasco Component Maintenance Manual, procedures are found only for "Repair." For this application, repair is equivalent to overhaul.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FARs 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(d) The inspection, overhaul, and replacement requirements shall be done in accordance with Menasco Canada, Ltd., Service Bulletin No. 32-18, Revision 1, dated June 5, 1980. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-8024, AD 91-18-20) becomes effective October 15, 1991.

Issued in Renton, Washington, on August 15, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-21497 Filed 9-6-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-43-AD; Amendment 39-8025; AD 91-18-21]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-7 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-7 series airplanes, which requires replacement of the left- and right-hand wing flap track No. 4 forward support fittings. This amendment is prompted by reports that some of these fittings are understrength due to incomplete heat treatment during their manufacture. This condition, if not corrected, could result in the flaps jamming. This action relates to the recommendations of the Airworthiness Assurance Task Force, assigned to review de Havilland Model DHC-7 series airplanes, which indicate that, to assure long term continued operational safety, the fittings should be replaced.

DATES: Effective October 15, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 15, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, at the FAA New England, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Maroof, New York Aircraft Certification Office, Airframe Branch, ANE-172; telephone (516) 791-6220. Mailing address: FAA, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain de Havilland Model DHC-7 series airplanes, which requires replacement of the left- and right-hand flap track No. 4 forward support fittings, was published in the **Federal Register** on May 24, 1991 (56 FR 23815).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 2 Model DHC-7 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $55 per manhour. The required parts will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $220.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibility among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the rules docket. A copy of it may be obtained from the rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-18-21. **Boeing of Canada, Ltd., De Havilland Division:** Amendment 39-8025. Docket No. 91-NM-43-AD.

Applicability: Model DHC-7 series airplanes; Serial Numbers 53 through 57, 59, and 60; certificated in any category.

Compliance: Required within one year after the effective date of this AD, unless previously accomplished.

To prevent jamming of the flaps and reduction of airplane controllability, accomplish the following:

(a) Replace the left- and right-hand wing flap track No. 4 forwarded support fittings in accordance with the Accomplishment Instructions of de Havilland Service Bulletin No. 7-27-37, dated October 28, 1981.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(d) The replacement requirements shall be done in accordance with de Havilland Service Bulletin No. 7-27-37, dated October 28, 1981. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, Renton, Washington; at the FAA, New England Region, New York Aircraft Certification Office, 181 S. Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39-8025, AD 91-18-21) becomes effective October 15, 1991.

Issued in Renton, Washington, on August 15, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-21498 Filed 9-6-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-161-AD; Amendment 39-8026; AD 91-19-01]

Airworthiness Directives; Canadair, Ltd., Model CL-600-1A11 (CL-600), CL-600-2A12 (CL-601), and CL-600-2B16 (CL-601-3A) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Canadair, Ltd., Model CL-600-1A11, CL-600-2A12, and CL-600-2B16 series airplanes, which requires a one-time inspection of the air driven generator (ADG) wiring harness to detect chafing, and repair, if necessary; and modification of the ADG harness installation. This amendment is prompted by reports of the ADG electrical output harness being chafed through by a wire connector on the turbine generator assembly. This condition, if not corrected, could result in loss of ADG power to the essential bus when the ADG is deployed during an emergency situation.

DATES: Effective September 24, 1991. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 24, 1991.

ADDRESSES: The applicable service information may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec, Canada H3C 3G9. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581-1145; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Cuneo, Systems and Equipment Branch, ANE-173; telephone (516) 791-6427. Mailing address: FAA, New England Region, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581-1145.

SUPPLEMENTARY INFORMATION: Transport Canada, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Canadair Models CL-600-1A11, CL-600-2A12, and CL-600-2B16 series airplanes. There have been three recent reports of the air driven generator (ADG) electrical output harness being chafed through by the backshell of connector P6XC on the turbine generator assembly. The chafing occurred on the airplane when the ADG was in the stowed position. When the ADG was deployed, the chafed wires shorted to the structure, preventing the ADG from powering the essential bus which provides electrical power to the hydraulic flight control system and to the essential flight control equipment. The shorting also caused damage to the ADG output harness and its supporting structure. This condition, if not corrected, could result in loss of emergency power to the essential bus when the ADG is deployed.

Canadair, Ltd., has issued Service Bulletins A600-0612 (for Model CL-600-1A11 series airplanes) and A601-0370 (for Models CL-600-2A12 and CL-600-2B16 series airplanes), both dated April 24, 1991, which describe procedures to perform a one-time inspection of the ADG wiring harness to detect chafing, and repair, if necessary; and modification of the ADG harness installation by replacing the two harness support brackets with redesigned brackets. Transport Canada has classified these service bulletins as mandatory, and has issued Canadian Airworthiness Directive CF-91-21, dated July 3, 1991, addressing this subject.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires a one-time inspection of the ADG wiring harness to detect chafing, and repair, if necessary; and modification of the ADG harness installation; in accordance with the service bulletins previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291.

It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–19–01. **Canadair, Ltd.:** Amendment 39–8026. Docket No. 91–NM–161–AD.

Applicability: Model CL–600–1A11 series airplanes, serial number 1004 through 1085; Model CL–600–2A12 series airplanes, serial numbers 3001 through 3066; and Model CL–600–2B16 series airplanes, serial numbers 5001 through 5098; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent loss of emergency power to the essential bus when the air driven generator (ADG) is deployed, accomplish the following:

(a) Within 25 hours time-in-service after the effective date of this AD, inspect the ADG wiring harness to detect chafing, in accordance with Canadair Service Bulletin A600–0612 (for Model CL–600–1A11 series airplanes), dated April 24, 1991, or Canadair Service Bulletin A 601–0370 (for Model CL–600–2A12 and CL–600–2B16 series airplanes), both dated April 24, 1991. If chafing is found, prior to further flight, repair in accordance with the applicable service bulletin previously described.

(b) Within 60 days after the effective date of this AD, modify the ADG harness installation in accordance with Canadair Service Bulletin A600–0612 (for Model CL–600–1A11 series airplanes), dated April 24, 1991, or Canadair Service Bulletin A601–0370 (for Model CL–600–2A12 and CL–600–2B16 series airplanes), dated April 24, 1991.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE–170, FAA, Engine and Propeller Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE–170.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) The inspection, repair, and modification requirements shall be done in accordance with Canadair Service Bulletin A600–0612 (for Model CL–600–1A11 series airplanes), dated April 24, 1991, or Canadair Service Bulletin A601–0370 (for Model CL–600–2A12 and CL–600–2B16 series airplanes), dated April 24, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec, Canada H3C 3G9. Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Line Avenue SW., Renton, Washington; at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

This amendment (39–8026, AD 91–91–01) becomes effective September 24, 1991.

Issued in Renton, Washington, on August 23, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–21492 Filed 9–6–91; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34–29645; File No. S7–900]

Technical Correction to Form

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; Correction.

SUMMARY: This document corrects a reference in General Instruction G.(2) of Form 10–K which was published March 16, 1982 (47 FR 11380) in a release relating to the integrated disclosure system. The correction concerns the reference within the General Instruction to "Rule 14a–3(b) or Rule 14c–3(b) or Rule 14c–(a)."

FOR FURTHER INFORMATION CONTACT: Anita Klein, (202) 272–3246, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, DC 20549.

§ 249.310 [Amended]

On page 11473, first column, § 249.310, General Instruction G.(2) of Form 10–K appearing in that release is corrected to read: "(2) The information called for by Parts I and II of this Form (Items 1 through 9 or any portion thereof) may, at the registrant's option, be incorporated by reference from the registrant's annual report to security holders furnished to the Commission pursuant to Rule 14a–3(b) or Rule 14c–3(a) or from the registrant's * * *."

Dated: September 3, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–21516 Filed 9–6–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 505 and 520

Transaction Control and Foreign Funds Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule; amendments.

SUMMARY: This final rule amends the Transaction Control Regulations (31 CFR part 505, the "TCR") and the Foreign Funds Control Regulations (31 CFR part 520, the "FFCR") in recognition of the reunification of Germany. The TCR are amended to delete references to the former German Democratic Republic, East Berlin, and the former autonomous state of Danzig, and to update the list of Coordinating Committee ("COCOM") member countries to include Spain and Australia. The FFCR are amended to remove the remaining World War II restrictions on property subject to U.S. jurisdiction of persons or entities located in the former Soviet sector of Germany on December 31, 1946.

EFFECTIVE DATE: September 9, 1991.

FOR FURTHER INFORMATION: William B. Hoffman, Chief Counsel (tel.: 202/535–6020), or Steven I. Pinter, Chief of Licensing (tel.: 202/535–9449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The TCR, issued on June 29, 1953, under the authority of the Trading with the Enemy Act, 50 U.S.C. app. 5(b), prohibit unlicensed involvement by individuals resident or located in the United States, U.S.-organized entities, and foreign entities controlled by such persons, in offshore sales of strategic goods to certain countries designated in § 505.10. These regulations supplement the Commerce Department's national security export controls on U.S.-origin products and technical data by restricting U.S. involvement in offshore trade in foreign-made strategic goods. The TCR except from their general prohibition those sales, not otherwise prohibited by the provisions of chapter 5 of CFR title 31, that are both from and licensed by one of the COCOM members listed in § 505.31, and destined for a country designated in § 505.10 other than Cambodia, North Korea or Vietnam.

The present amendments to the TCR remove outdated references in § 505.10 to restrictions on exports to the former German Democratic Republic, East

Berlin, and the former autonomous state of Danzig. These changes recognize the reunification of Germany on October 3, 1990, and the post-war restoration of Danzig to Poland. The amendments also update the list of COCOM countries in § 505.31 to include Spain and Australia, which joined COCOM in 1985 and 1989, respectively.

The FFCR were issued by the Secretary of the Treasury on April 10, 1940, to implement sanctions imposed by the President through Executive Order 8389 to protect the property within U.S. jurisdiction of persons in Nazi-occupied territory. Effective June 14, 1941, the FFCR were extended through Executive Order 8785 to block property within U.S. jurisdiction of Germany and its nationals.

Since World War II, most property blocked by the FFCR has been released pursuant to the general license in § 520.101. In 1953, controls were lifted for property owned by the Federal Republic of Germany, West Berlin, and the Saar, and by any individual, partnership, association, corporation, or other organization which on December 31, 1946, was not located in the Soviet sector of Germany (including Berlin). The FFCR are being amended to terminate the blocking of property within U.S. jurisdiction of individuals and entities located in the Soviet sector of Germany on December 31, 1946. This amendment is in recognition of the reunification of Germany. Residual blocking restraints remain in place under the FFCR with respect to property subject to U.S. jurisdiction of the Baltic States (Estonia, Latvia and Lithuania) and their nationals, blocked during World War II.

Because the TCR and FFCR involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR

Part 505

Australia, Banks, Banking, Foreign trade, Germany, Reporting and recordkeeping requirements, Spain.

Part 520

Administrative practice and procedure, Blocking of assets, Currency, Foreign investments in United States, Germany, Reporting and recordkeeping requirements, and Securities.

For the reasons set forth in the preamble, 31 CFR part 505 is amended as follows:

PART 505—REGULATIONS PROHIBITING TRANSACTIONS INVOLVING THE SHIPMENT OF CERTAIN MERCHANDISE BETWEEN FOREIGN COUNTRIES

1. The authority citation for part 505 is revised to read as follows:

Authority: Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

§ 505.10 [Amended]

2. The schedule to § 505.10 is amended by removing the entries "German Democratic Republic" and "East Berlin," and by revising "Poland and Danzig" to read "Poland."

3. Paragraph (a)(2) of § 505.31 is revised to read as follows:

§ 505.31 General license for offshore transactions from certain countries.

(a) * * *

* * * * *

(2) Shipment is made from and licensed by one of the following foreign countries: Australia, Belgium, Canada, Denmark, France, Germany, Greece, Italy, Japan, Luxembourg, The Netherlands, Norway, Portugal, Spain, Turkey, or the United Kingdom.

* * * * *

§ 505.31 [Amended]

4. Paragraph (b) of § 505.31 is revised to read as follows:

(b) This section does not authorize any transactions otherwise prohibited by this chapter.

For the reasons set forth in the preamble, 31 CFR part 520 is amended as follows:

PART 520—FOREIGN FUNDS CONTROL REGULATIONS

1. The authority citation for part 520 is revised to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 8389, 5 FR 1400, as amended by E.O. 8785, 6 FR 2897, E.O. 8832, 6 FR 3715, E.O. 8963, 6 FR 6348, E.O. 8998, 6 FR 6785, and E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 10348, 17 FR 3769, 3 CFR, 1949–1953 Comp., p. 871; E.O. 11281, 31 FR 7215, 3 CFR, 1966–1970 Comp., p. 546.

Subpart B—General Licenses

2. Paragraph (a)(1) of § 520.101 is revised to read as follows:

§ 520.101 General License No. 101.

(a) * * *

(1) Estonia, Latvia, and Lithuania

* * * * *

§ 520.101 [Amended]

3. Paragraph (a)(3) of § 520.101 is removed.

4. Paragraph (a)(4) of § 520.101 is redesignated as paragraph (a)(3), and revised to read as follows:

§ 520.101 General License No. 101.

(a) * * *

* * * * *

(3) Any other partnership, association, corporation, or other organization which was a national of any country designated in paragraph (a)(1) of this section by reason of the interest therein of any such country or by reason of the interest therein of any individual, partnership, association, corporation, or other organization specified in paragraph (a)(2) of this section.

* * * * *

Dated: August 13, 1991.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 19, 1991.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91–21493 Filed 9–4–91; 12:00 pm]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 619

Program for Qualifying DOD Freight Motor Carriers

AGENCY: Military Traffic Management Command (MTMC); Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Carrier Qualification Program (CQP) requirement to obtain a $100,000 performance bond has been temporarily suspended pending a review of the bond requirement. During this period, motor carriers who have already obtained a performance bond have the option of either maintaining or cancelling their bond. Bond cancellation will not affect current approval to transport DOD freight. Upon completion of our review, we will notify all affected carriers of any revisions to the bond requirement, which must then be complied with to maintain DOD approval. Any revisions will also be published in the **Federal Register.**

EFFECTIVE DATE: September 9, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Robbie Randolph or Ms. Rose Sharpe, Headquarters, Military Traffic Management Command, attn: MTIN, 5611 Columbia Pike, Falls Church, VA 22041-5050, (703) 756-1356.

SUPPLEMENTARY INFORMATION: Information on the CQP was previously published in the **Federal Register**, 53 FR 17970, 54 FR 27667, 55 FR 7361, 55 FR 52976, and 56 FR 2849. The Performance Bond section of the CQP requires carriers to submit a letter of intent to file a bond from a surety company with their initial CQP application. After MTMC approval of the CQP package, motor carriers must provide the actual Performance Bond. The sum of the bond has to be no less than $100,000 and has to be continuous until cancelled. The Performance Bond serves to ensure the DOD has the capability to arrange for the onward movement of frustrated or abandoned shipments in the event the carrier is unable to perform for whatever reason.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 91-21495 Filed 9-6-91; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN90-1-5244; FRL-3985-5]

Approval and Promulgation of Implementation Plans; Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a request by the State of Tennessee to incorporate permits which contain limits on volatile organic compound (VOC) emissions for the Nissan Motor Manufacturing, USA, (Nissan) into the Tennessee State Implementation Plan (SIP). Nissan is located in Smyrna, Tennessee (Rutherford County). The revised emission limits are consistent with the federally approved Tennessee SIP. Therefore, EPA is today approving the request.

DATES: This action will become effective on November 8, 1991 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Kay Prince of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Tennessee Department of Environment, and Conservation, Customs House, 4th Floor, Nashville, Tennessee 37243-1531

FOR FURTHER INFORMATION CONTACT: Kay Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On February 19, 1991, with revised information provided on April 29, 1991, the State of Tennessee through the Tennessee Department of Conservation submitted a request to incorporate into the Tennessee SIP permits for Nissan. The Tennessee SIP provides for alternate emissions standards to be granted to a facility that is reducing or will be after a specified date taking actions to reduce emissions of volatile organic compounds at least as much as is required under the other applicable rules.

The Nissan facility manufactures automobiles and light duty trucks and operates under an NSR permit issued by the State of Tennessee. The revised permits combine the wash solvent with the topcoat and primer booth. Although emissions will increase from these operations in 1991 and 1992, emissions will be reduced to their 1990 levels by 1993. However, total emissions from the facility will decrease progressively from 1991 through 1993. The emission limits of 1.47 kg per liter of solids applied using actual transfer efficiency for topcoating and 1.40 kg per liter of solids applied using actual transfer efficiency for the primer booth remain unchanged. These limits are required to be met regardless of any other allowable emissions contained in the permits. Therefore, the Nissan permits are approvable for incorporation into the SIP.

Final Action

EPA approves the revised Nissan permits for topcoat, primer, PVC, bit wax, and miscellaneous operations at its Smyrna, Tennessee facility. This action is being taken without prior proposal because the change is noncontroversial and EPA anticipates no significant comments on it. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have significant economic impact on a substantial number of small entities (see 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Agency has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: August 9, 1991.

Patrick M. Tobin,

Acting Regional Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart RR—Tennessee

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2220 is amended by adding paragraph (c)(104) to read as follows:

§ 52.2220 Identification of plan.

* * * * * *

(c) * * *

(104) The Tennessee Department of Conservation submitted a Board order including a certificate of alternate control and revised permits for the Nissan Motor Manufacturing facility located in Smyrna, Tennessee, to EPA on February 19, 1991, with revised information provided on April 29, 1991.

(i) Incorporation by reference.

(A) Nissan Motor Manufacturing Corporation USA operating permit numbers 029538P, 029539P, 029540P, 029541P, 029543P and 029544P which were issued on July 30, 1990, and 030180P which was issued on September 17, 1990.

(ii) Other materials.

(A) Letters of February 19, 1991, and April 29, 1991, from the Tennessee Department of Conservation.

[FR Doc. 91–21537 Filed 9–6–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 12

RIN 1090–AA30

Administrative Requirements and Cost Principles for Assistance Programs

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Final rule.

SUMMARY: This rule revises a rule published by the Department in the February 14, 1985 issue of the **Federal Register** (50 FR 6176). The rule implemented Government-wide requirements established by the Office of Management and Budget (OMB) under OMB Circulars for the administration of assistance agreements. The revision also extends the scope of the rule to reference Circulars which contain audit requirements.

EFFECTIVE DATE: The provisions of this final rule are effective October 9, 1991.

FOR FURTHER INFORMATION CONTACT: Dean A. Titcomb, Office of Acquisition and Property Management, Acquisition and Assistance Division, 1849 C Street NW., Mail Stop 5512, Washington, DC 20240, (202) 208–6431.

SUPPLEMENTARY INFORMATION: Since the publication of this rule on February 14, 1985, several significant changes have occurred regarding two of the referenced Circulars. First, on March 11, 1988 (53 FR 8032), the Department published an agency-specific preamble and amendments as part of a final common rule which revised this regulation that implemented OMB Circular A–102. The Circular was restructured to be addressed solely to Federal agencies and a common government-wide regulation was promulgated which states the fiscal and administrative conditions governing grants to State and local governments and subgrantees. This revision will refer to the applicability of the common rule.

Secondly, OMB published OMB Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions," on March 16, 1990, in the **Federal Register** (55 FR 10019). This Circular superseded Attachment F, subparagraph 2h, of Circular A–110, "Uniform Administrative Requirements for Grants and other Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations." This rule will specifically implement use of the audit requirements in Circular A–133 and supplements the current applicability of Circular A–128, "Audit Requirements for State and local Governments."

Public Participation

The administrative and cost requirements under this rule are required by OMB Circulars to be applied to all affected assistance activities. Since the changes to the Circulars which require this revision were done with public participation, under 5 U.S.C. 553(b)(B), proposed rulemaking procedures are considered unnecessary and contrary to the public interest. Therefore proposed rulemaking is being waived.

Executive Order 12991, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities since OMB Circular A–133 distinguishes audit requirements between nonprofit institutions that receive $100,000 or more a year in Federal awards; those that receive at least $25,000 but less than $100,000 a year; and exempts from audit requirements those institutions receiving less than $25,000 a year in Federal awards. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The Department of Health and Human Services was requested by OMB to serve as the lead agency on behalf of OMB and all of the Federal agencies that will be implementing Circular A–133 for the purpose of processing the request for approval under the Paperwork Reduction Act. The request was reviewed and approved by the OMB Office of Information and Regulatory Affairs with OMB Control Number 0991–0003.

Environmental Effects

The Department has determined that this rule does not constitute a major Federal action having a significant impact on the human environment under the National Environmental Policy Act of 1969.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program.

For the reasons set out in the Preamble, the Department of the Interior amends title 43, Code of Federal Regulations as set forth below pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301.

Dated: August 5, 1991.

John E. Schrote,

Assistant Secretary—Policy, Management and Budget.

PART 12—ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for part 12 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L.

100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); 5 U.S.C. 301; Pub. L. 98-502; OMB Circular A-102; OMB Circular A-110; OMB Circular A-128; and OMB Circular A-133.

2. The title for part 12 is revised to read as follows:

PART 12—ADMINISTRATIVE AND AUDIT REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

Subpart A—Administrative Requirements and Cost Principles

3. Subpart A is amended as set forth below.

a. The title for subpart A is revised to read as follows:

Subpart A—Administrative and Audit Requirements and Cost Principles for Assistance Programs

b. Section 12.2 is amended by revising paragraphs (a) and (b) to read as follows:

§ 12.2 Policy.

(a) All financial assistance awards and subawards, in the form of grants and cooperative agreements, in accordance with paragraph (b) below, are subject to subpart C of this part, OMB Circulars A-102, "Grants and Cooperative Agreements with State and Local Governments," A-110, "Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," A-87, "Cost Principles for State and Local Governments," A-21, "Cost Principles for Educational Institutions," A-122, "Cost Principles for Nonprofit Organizations," A-128, "Audit Requirements for State and Local Governments, and A-133, "Audits of Institutions of Higher Education and other Nonprofit Institutions," as revised. (The Department's implementation of OMB Circular A-128 is subpart B of this part.)

(b)(1) Governmental recipients and subrecipients are subject to subpart C of this part, Circulars A-87 and A-128.

(2) Institutions of higher education which are recipients or subrecipients are subject to Circulars A-110, A-21, and A-133.

(3) Nonprofit organizations which are recipients or subrecipients are subject to Circulars A-110, A-122, and A-133.

* * * * *

[FR Doc. 91-21509 Filed 9-6-91; 8:45 am]

BILLING CODE 4310-RF-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 910650-1218]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The Secretary of Commerce changes the total allowable catch (TAC), allocations, quotas, and bag limits for the Atlantic and Gulf of Mexico migratory groups of king and Spanish mackerel in accordance with the framework procedure of the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). This notice: (1) For the Atlantic and Gulf migratory groups of king and Spanish mackerel, increases TAC and allocations; (2) for the Gulf migratory group of king mackerel in the eastern area (off Florida), removes the three-fish alternative bag limit available for persons fishing from charter vessels so that a bag limit of two per person per day applies throughout the eastern area without regard to the type of vessel; (3) for the Atlantic migratory group of king mackerel, removes the differential bag limits for northern and southern areas and increases the bag limit to five per person per day; and (4) for cobia, clarifies that the existing recreational/commercial daily bag limit of two per person applies regardless of the number of trips or the duration of a trip. The intended effects are to protect the coastal migratory pelagic resources from overfishing, continue stock rebuilding programs while still allowing catches by important recreational and commercial fisheries dependent on these resources, and clarify the regulations.

EFFECTIVE DATE: September 4, 1991.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3161.

SUPPLEMENTARY INFORMATION: The mackerel fisheries are regulated under the FMP, as amended, which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 642.

In accordance with the FMP and its implementing regulations, the Councils recommended, and NOAA published, a proposed rule containing changes in TACs, allocations, quotas, and bag limits for king and Spanish mackerel (56 FR 29920, July 1, 1991). That notice: (1) Described the framework procedures of the FMP through which the Councils recommended changes in TACs, allocations, quotas, and bag limits; (2) specified the recommended changes; and (3) described the need and rationale for the recommended changes. Those descriptions are not repeated here; the specifications implemented by this final rule are the same as those in the proposed rule.

Comments and Responses

One letter commenting on the proposed changes was received during the comment period from the Florida Marine Fisheries Commission (Commission).

Comment

For the reasons listed below, the Commission opposes increasing the daily bag limit from two to five per person for Atlantic group king mackerel in the exclusive economic zone (EEZ) in the southern area off Florida. First, the higher bag limit will increase fishing mortality not only on the Atlantic group king mackerel but also on the overfished Gulf group king mackerel that may occur in the southeast Florida mixing zone during April–October. (During this period all king mackerel caught off the Florida east coast are considered to be Atlantic group king mackerel; during the remainder of the fishing year, November–March, they are considered Gulf group king mackerel.)

Second, the five-fish bag limit in the EEZ will increase confusion for Florida anglers and law enforcement officials. Initially, they experience a uniform two-fish king mackerel bag limit state-wide in Florida and adjacent Federal waters at the beginning of the fishing year. However, in recent years when the recreational allocation has been reached, the two-fish bag limit for the Gulf group has been reduced to zero in Federal waters and to one in State waters. These changing bag limits are especially confusing for Floridians who, as a result of the seasonal boundaries, can fish for both Atlantic and Gulf king mackerel groups during the year. To simplify the regulations, the Commission prefers retention of the two-fish bag limit within and without State waters for both Atlantic and Gulf groups of king mackerel until improved Gulf king mackerel stock conditions and subsequent increased allocations can support uninterrupted year-round harvest State-wide.

Third, if implemented, the five-fish bag limit for Atlantic group king

mackerel would impel Florida recreational interests to urge state and Federal managers to increase the bag limit for the overfished Gulf group king mackerel. Previous pressure from this group has been formidable. In 1988, their strong opposition to zero bag limits for the Gulf group king mackerel dissuaded the Commission from pursuing its preferred option. During the previous 1987/88 fishing year, the Commission implemented zero bag limits in state waters when the Federal quota for this group was reached, and bag limits were reduced to zero in Federal waters for the remainder of the season (December 16, 1987–July 31, 1988). For the 1988/89 fishing year, however, the Commission did not implement zero bag limits when the quota was reached mid-season, and bag limits again reverted to zero in Federal waters for the remainder of the fishing year (December 17, 1988–July 31, 1989). In response to the demands of recreational fishing interests, the Commission reduced the daily bag limit only to one per person in Florida waters for the remainder of the 1988/89 fishing year and subsequent fishing years (1989/90 and 1990/91) in response to the implementation of zero bag limits in the EEZ (May 21, 1990; December 20, 1991). The Commission asserts its preference to implement regulations compatible with Federal regulations and to continue rebuilding the Gulf group king mackerel. It suggests that realization of this endeavor would be achieved more readily through implementation of Federal regulations in the EEZ off Florida that do not conflict with State law.

Fourth, the Commission does not believe that the condition of the Atlantic group king mackerel is as healthy as the stock assessment panel has concluded. It fears that the present stock condition may not support the higher bag limit, even though stock assessments indicate that spawning biomass appears to be adequate and the Atlantic group king mackerel is not overfished. The Commission contends that catch indices for the past decade suggest a declining trend and that certain inherent biases (e.g., reliance on fishery-dependent data) in the stock assessment process may artificially inflate stock abundance. Furthermore, previous and recent testimony from Florida fishermen depicts a resource that is not as abundant as it was 10 years ago, although slight improvements have been noted following the prohibition of driftnet harvest under Amendment 3 (April 1990).

Finally, the Commission contends that Federal policy and law under E.O. 12612 and the Coastal Zone Management Act compel retention of the current two-fish bag limit in the southern area off Florida. Specifically, the Commission contends that an increase in the bag limit (1) interferes with the ability of Florida to develop its own policies to achieve program objectives, contrary to E.O. 12612; and (2) is not consistent to the maximum extent practicable with Florida's approved coastal zone management plan.

Response

NOAA supports the five-fish bag limit for Atlantic group king mackerel throughout the management area. Although, in the past, the Councils and NOAA have honored Florida's and other states' requests to establish in the EEZ bag limits for overfished mackerel groups that were compatible with state law, available scientific information and Federal law and policy do not support a continuation of the two-fish bag limit in the EEZ in the southern area off Florida. Rather, the data support the recommendation of the Councils to increase the bag limit to five throughout the management area. The Councils' recommendation was based mostly on information in the 1991 stock assessment and information received in public testimony.

The Commission's perception of a threat of increased fishing mortality on the overfished Gulf group king mackerel is unsupported by recent tagging information reviewed during the 1991 Stock Assessment. These data indicate that the proportion of Gulf group king mackerel in the Florida mixing zone has decreased, and the panel concluded that the current seasonal boundary, designed specifically to protect the Gulf group, should remain unchanged. The Panel will reconsider the boundary as new stock identification information from ongoing scientific studies (e.g., genetics and tagging) becomes available.

The threat of increased fishing mortality on the overfished Gulf group king mackerel resulting from public pressure to increase bag limits to levels set for the Atlantic group king mackerel could be detrimental only if concessions are granted that would undermine the rebuilding goals for the Gulf group. Increased bag limits for the Gulf group are inappropriate at this time. Such increases would be incongruent with the stock rebuilding program established in the FMP and would promote earlier filling of the quota and subsequent implementation of zero bag limits that would foster even greater negative impacts Gulfwide on the recreational fishing community.

NOAA disagrees that the recommended bag limit change for Atlantic group king mackerel will create confusion and bring about significant harm in terms of "voluntary compliance and effective law enforcement." NOAA believes that implementation of a uniform five-fish bag limit throughout the EEZ management area from New York through Florida would simplify the regulations. To reduce complexity and confusion even further, NMFS will request affected States to adjust their mackerel regulations to conform to the FMP. This endeavor is undertaken yearly to afford simplicity and compatibility between State/Federal regulations, thereby promoting compliance and enforceability. This initiative and the uniform bag limit for the Atlantic group king mackerel are consistent with national standard 3 requiring that an individual stock (group) be managed as a unit to the extent practicable.

The Councils' and NOAA's decision to establish a five-fish bag limit region-wide for Atlantic group king mackerel is based on the best available scientific information. As outlined in the FMP, the annual adjustment of mackerel specifications (TACs, commercial/recreational allocations, bag limits, etc.) is principally guided by the biological information in the annual stock assessment that is conducted and approved by State/Federal fishery scientists. From this year's report (1991), the Councils were apprised that Atlantic group king mackerel are not overfished. Spawning potential ratio is estimated at 48 percent, well above the recommended 30 percent level below which a stock is considered to be overfished. An improved condition and reduced uncertainty in the estimate of the stock were indicated by this year's reported modal value (11.5 million pounds, M) and range (9.6–15.5 M) of the acceptable biological catch (ABC). That modal value of ABC is almost 40 percent above last year's value of 8.3 M (1990 ABC range was 6.5–15.7 M). This 8.3 M level was recommended by the Councils and implemented by NOAA as the 1990/91 TAC. The Councils approved the 1991 report of the mackerel stock assessment panel and subsequently recommended an increase in TAC to 10.5 M for this 1991/92 fishing year. This TAC represents a 27 percent increase above last year's TAC. Nevertheless, it is conservatively set one million pounds below the modal ABC estimate and 5.2 million pounds below the upper ABC range.

The Councils also considered other information in formulating the five-fish

region-wide bag limit. In addition to recognizing that the Atlantic king mackerel group is not overfished, the Councils realized that the proposed 1991/92 TAC would increase the recreational allocation by 25 percent, and that last year's recreational catch reached only 57 percent of its allocation. The Councils and NOAA believe that the five-fish bag limit is a requisite for the achievement of optimum yield (OY) while preventing overfishing for this fishery, as mandated by national standard one of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and objective one of the FMP. Denying Florida fishermen an opportunity to participate in the Councils' recommended allocation and bag limit increases for the 1991/92 fishing year would be inconsistent with these standards and also with national standard four that mandates fair and equitable allocation to all resource users. The Councils also believe that the increased bag limit may reverse economic declines in the charter vessel industry that have been attributed to the lower bag limits.

Catch information offered by the Commission concerning the health of Atlantic group king mackerel was considered by the Stock Assessment Panel. Although certain catch indices for the past 10 years show an apparent downward trend, they did not suggest a resource decline to the Panel. The 1991 stock assessment report concluded that "catches have remained stable since 1981." In offering this conclusion the Panel advised that a downward trend is not apparent under close examination of annual landings data. The report explained and warned that "comparisons of annual landings are confounded by regulations implemented which restricted landings." This statement also indicates that the state/Federal management regime is effectively regulating and reducing fishing effort and mortality.

NOAA believes that the rationale offered by the Councils in support of the five-fish bag limit for the Atlantic group king mackerel is consistent with Federal law and policy. The Councils' intent that the FMP supersede state law by increasing this bag limit is clear; that is, the state cannot limit the landing of Atlantic group king mackerel to two per person per day for fish caught in the EEZ. The increase is consistent with the Magnuson Act and other Federal law and not in contradiction to the Coastal Zone Management Act and E.O. 12612, as contended by the Commission. These two Federal directives are designed to guide the decision process to consider state programs and policies; they do not dictate unilateral inflexibility.

In the recent implementation of Amendment 5 to the FMP (55 FR 29370), and as concluded in all past amendments and with the implementation of the FMP itself, the Councils determined that the FMP-related rules have been implemented "to the maximum extent practicable" with Florida's approved Coastal Zone Management Program. Clearly, the FMP as amended contemplates that Federal management plays a leading role in establishing bag limits, with states adjusting their limits in conformance with the Federal limit, not vice versa. Florida has previously adjusted its limit to accommodate the FMP and has never construed the FMP as inconsistent with Florida's coastal zone program.

Further, previous FMP actions that reduced bag limits in Federal waters to lower state levels were mainly resource based, i.e., Federal bag limits were lowered on overfished mackerel stocks to reduce mortality, prolong the harvest season, and rebuild spawning stock biomass. Similar rationale supported the 1988 establishment of a two-fish bag limit for the Atlantic group king mackerel in Federal waters off Florida, when lower catch limits were implemented in response to the stock assessment report that catches were near or slightly above full utilization. Consequently, NOAA perceives no disruption of previous consistency determinations resulting from the implementation of the five-fish bag limit for Atlantic group king mackerel in the EEZ off Florida.

This Federal action does not diminish the authority or jurisdiction of the state within its boundaries; the Federal bag limit supersedes state limits only with respect to what may be landed. NOAA believes the increase is necessary and appropriate for the conservation and management of king mackerel, and is necessary to carry out the FMP. NOAA acknowledges the desirability of compatible Federal/State regulations. However, the record clearly reflects the Councils' intent to establish a different measure in this instance.

The Regional Director concurs that the Councils' recommendations are necessary to protect the stocks and prevent overfishing and that they are consistent with the goals and objectives of the FMP, the Magnuson Act, and other applicable law. Accordingly, the Councils' recommended changes are implemented.

The changes in allocations and quotas are effective for the Atlantic migratory groups of king and Spanish mackerel and the Gulf group of Spanish mackerel for the fishing year that began on April 1, 1991, and for the Gulf migratory group of king mackerel for the fishing year that began July 1, 1991. The Councils submitted this action to the Southeast Regional Director on May 17, 1991. The proposed rule was published on July 1, 1991, and the 15-day public comment period ended on July 16, 1991. Because the changes herein for mackerel allocations, quotas, and bag limits are established for fishing years that have already commenced, the Assistant Administrator for Fisheries, NOAA, finds for good cause, namely, to provide effective conservation and management of the coastal migratory pelagic resources, that it is impracticable and contrary to the public interest to delay for 30 days the effective date of this rule under the provisions of section 553(d)(3) of the Administrative Procedure Act.

Other Matters

This action is authorized by 50 CFR 642.27 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 3, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 642.21 [Amended]

2. In § 642.21, the numbers are revised in the following places to read as follows:

Paragraph	Removed	Added
(a)(1), first sentence	1.36	1.84
(a)(1)(i)	0.94	1.27
(a)(1)(ii)	0.42	0.57
(a)(2), first sentence	3.08	3.90
(b)(1)	2.89	3.91
(b)(2)	5.22	6.60
(c)(1)	2.99	4.90
(c)(2)	3.14	3.50
(d)(1)	2.26	3.70
(d)(2)	1.86	3.50

3. In § 642.28, paragraphs (a)(1), (a)(3)(i), (a)(3)(ii) introductory text, and (b) are revised to read as follows:

§ 642.28 Bag and possession limits.

(a) * * *

(1) *Bag limits.* A person who fishes for king or Spanish mackerel from the Gulf or Atlantic migratory group in the EEZ, except a person fishing under a permit specified in § 642.4(a)(1) and an allocation specified in § 642.21 (a) or (c), or possessing the purse seine incidental catch allowance specified in § 642.24(d), is limited to the following:

(i) *King mackerel Gulf migratory group.*

(A) *Eastern area.* Possessing two king mackerel per person per day.

(B) *Central and western areas.*

(*1*) Possessing three king mackerel per person per day, excluding the operator and crew, or possessing two king mackerel per person per day, including the operator and crew, whichever is the greater, when fishing from a charter vessel.

(*2*) Possessing two king mackerel per person per day when fishing from other vessels.

(ii) *King mackerel Atlantic migratory group.* Possessing five king mackerel per person per day.

(iii) *Spanish mackerel Gulf migratory group.*

(A) *Eastern area.* Possessing five Spanish mackerel per person per day.

(B) *Central area.* Possessing ten Spanish mackerel per person per day.

(C) *Western area.* Possessing three Spanish mackerel per person per day.

(iv) *Spanish mackerel Atlantic migratory group.*

(A) *Northern area.* Possessing ten Spanish mackerel per person per day.

(B) *Southern area.* Possessing five Spanish mackerel per person per day.

* * * * *

(3) * * *

(i) For the purpose of paragraph (a)(1)(iv) of this section, the boundary between the northern and southern areas is a line extending directly east from the Georgia/Florida boundary (30°42'45.6"N. latitude) to the outer limit of the EEZ.

(ii) For the purposes of paragraphs (a)(1)(i) and (a)(1)(iii) of this section,

* * * * *

(b) *Cobia.* The daily bag and possession limit for cobia in or from the EEZ of the Gulf of Mexico and the Atlantic Ocean south of the Virginia/North Carolina border is two fish per person, regardless of the number of trips or duration of a trip and without regard to whether the cobia are taken aboard a vessel with a commercial permit.

* * * * *

[FR Doc. 91-21515 Filed 9-4-91; 12:55 pm]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 901199-1021]

Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure to directed fishing in the Bering Sea.

SUMMARY: NMFS is prohibiting directed fishing for pollock in the Bering Sea (BS) subarea. This action is necessary to prevent exceeding the total allowable catch (TAC) for pollock in the BS subarea. The intent of this action is to promote optimum use of groundfish while conserving pollock stocks.

DATES: Effective 12 noon, Alaska local time (A.l.t.), September 4, 1991, through 12 midnight, A.l.t., December 31, 1991.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Bering Sea and Aleutian Islands Groundfish Fishery (FMP) governs the groundfish fishery in the exclusive economic zone in the Bering Sea and Aleutian Islands Area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.93 and part 675.

The amount of a species or species group apportioned to a fishery is TAC, as defined at § 675.20(a)(2). Under the final notice of initial specifications (56 FR 6290; February 15, 1991), the TAC of pollock for the BS subarea was established as 1,300,000 metric tons (mt) Under § 675.20(a)(3), 15 percent of the TAC was apportioned to a non-specific reserve, and the remaining initial TAC of 1,105,000 mt was allocated between the roe and non-roe seasons. The roe season directed fishery occurred from January 1, 1991, through February 22, 1991 (56 FR 8146; February 27, 1991). The balance of the initial TAC became available for directed fishing at noon, A.l.t., on June 1, 1991 (§ 675.20(a)(2)(B)(ii)). During the non-roe season, with an apportionment of the reserve (56 FR 40809; August 16, 1991), the BS subarea TAC for 1991 was increased to 1,300,000 mt.

The Regional Director has determined that the catch of pollock in the BS subarea has reached 1,292,500 mt. It is expected that the remaining 7,500 mt of pollock is necessary as bycatch to support anticipated groundfish fisheries. With this action, NMFS is establishing a directed fishing allowance of 1,292,500 mt and is prohibiting directed fishing for pollock in the BS subarea under § 675.20(a)(8), effective 12 noon, A.l.t., September 4, 1991, through 12 midnight, A.l.t., December 31, 1991.

After this closure, in accordance with § 675.20(h)(6), amounts of pollock retained on board a vessel in the BS subarea must be less than 20 percent of the aggregate catch of the other fish or fish products retained at the same time on the vessel during the same trip.

Classification

This action is taken under 50 CFR 675.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16, U.S.C. 1801 *et seq.*

Dated: September 3, 1991.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-21433 Filed 9-3-91; 4 33 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 174
Monday, September 9, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FARM CREDIT ADMINISTRATION

12 CFR Parts 613 and 618

RIN 3052-AB28

Eligibility and Scope of Financing; General Provisions; Financing of Basic Processing and Marketing Activities; Authorized Insurance Services

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), proposes to amend the regulations at 12 CFR parts 613 and 618 in order to reflect certain amendments to the Farm Credit Act of 1971 (1971 Act) by the Food, Agriculture, Conservation and Trade Act of 1990 (1990 Farm Bill). The 1990 Farm Bill amended provisions of the 1971 Act pertaining to the throughput requirements for processing and marketing loans and removed the requirement that Farm Credit System institutions offer a choice of two carriers for each insurance program. The proposed amendment to part 613 would delete the 20-percent minimum throughput requirement for loans financing the processing and/or marketing operations of eligible farmers, ranchers, and producers or harvesters of aquatic products, and reflect the statutory limitation on the volume of such loans. The proposed amendment to part 618 modifies the requirement that all Farm Credit System institutions must offer more than two insurance carriers.

DATES: Comments should be received on or before October 9, 1991.

ADDRESSES: Comments may be mailed or delivered (in triplicate) to Jean Noonan, General Counsel, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:
Linda C. Sherman, Senior Credit Specialist, Policy and Risk, Analysis Division, Office of Examination, Farm Credit, Administration, McLean, VA 22102-5090, (703) 883-4498, or
Richard A. Katz, Attorney, Regulatory and Legislative Law Branch, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 833-4444.

SUPPLEMENTARY INFORMATION:

I. General

The Food, Agriculture, Conservation and Trade Act of 1990 [1] (1990 Farm Bill) was enacted into law on November 28, 1990. Section 1632 of the 1990 Farm Bill amended sections 1.11(a) and 2.4(a)(1) of the 1971 Act, which authorized Farm Credit Banks (FCBs) and associations, under certain conditions, to finance the processing and/or marketing operations of farmers, ranchers, and producers or harvesters of aquatic products. Section 1834 of the 1990 Farm Bill modified the requirements in section 4.29 of the 1971 Act pertaining to insurance services. The FCA now proposes to amend the applicable regulations to conform to the changes to the statute.

II. Processing and Marketing Loans

Sections 1.11(a) and 2.4(a)(1) of the 1971 Act formerly authorized FCBs and production credit associations respectively, to make processing and marketing loans to farmers, ranchers, and producers or harvesters of aquatic products if the borrower's agricultural operations supplied at least 20 percent of the total processing or marketing (throughput) for which financing was extended.

Section 1832 of the 1990 Farm Bill deleted the 20-percent throughput requirement from sections 1.11(a) and 2.4(a)(1) of the 1971 Act, and substituted the requirement that the borrower's agricultural or aquatic operations supply "some portion" of the product used in the borrower's processing and/or marketing operations. The 1990 Farm Bill also added a provision to the 1971 Act limiting the aggregate of processing and marketing loans to borrowers who provide less than 20 percent of the throughput to 15 percent of the total outstanding loans by FCBs and direct lender associations in each district.

A. Minimum Throughput Level

Sections 1.11(a) and 2.4(a)(2) of the 1971 Act, as amended by the 1990 Farm Bill, authorize FCBs and direct lender associations to finance basic processing and/or marketing operations that are "directly related" to the agricultural or aquatic activities of farmers, ranchers, and producers or harvesters of aquatic products. The statute no longer specifies a minimum amount of throughput that borrowers must contribute to their processing and/or marketing operations.

The legislative history of the 1990 Farm Bill indicates that Congress changed the throughput requirement in order "to provide greater flexibility to farmers and to prevent, in the future, a farmer from becoming ineligible for Farm Credit System financing due to the success and growth of a marketing and processing operation." [2] Since the borrower's share of the total throughput may decline as the processing and/or marketing operation expands, a percentage requirement could cause a successful processing and/or marketing operation to eventually lose its eligibility for financing from FCBs and direct lender associations. In this context, Congress "specifically sets no bottom limit for what portion the on-farm production must make up of the total throughput." [3]

The FCA proposes to implement sections 1.11(a) and 2.4(a)(1) of the 1971 Act by amending § 613.3045(b)(2) to allow FCBs and direct lender associations to finance the processing and/or marketing operations of farmers, ranchers, and aquatic producers or harvesters whose agricultural or aquatic activities supply, on a sustained basis, some portion of the throughput sufficient to demonstrate that the processing and/or marketing activities constitute a logical and actual extension of the borrower's agricultural or aquatic operations.

The 1990 Farm Bill does not expand eligibility for processing and marketing loans to borrowers who are not bona fide farmers, ranchers, and producers or harvesters of aquatic products pursuant to § 613.3020. Furthermore, the FCA continues to support the requirement in

[1] Pub. L. No. 101-624, 104 Stat. 3359 (1990).

[2] S. Rep. No. 357, 101st Cong., 1st Sess. 258 (1990).

[3] *Id.*

the existing regulation, § 613.3045(b)(2)(i), that the basic processing and/or marketing activities constitute a "logical and actual extension of the (borrower's) operation for financing vertical integration from the production stage through the basic processing and/or marketing stage."

The FCA considered alternatives, such as defining "some portion" of the throughput as a percentage sufficient to ensure that eligibility would not be expanded beyond the congressional intent. The FCA, however, rejected this approach because Congress specifically elected not to impose a minimum throughput requirement on processing and marketing loans.

The FCA invites comments on whether additional changes to § 613.3045 are needed to ensure that eligibility is limited to the processing and/or marketing operations of bona fide farmers, ranchers, and producers or harvesters of aquatic products.

B. Restrictions on the Amount of Certain Processing and Marketing Loans

The 1990 Farm Bill amends sections 1.11(a) and 2.4(a)(1) of the 1971 Act to limit the amount of processing and marketing loans that FCBs and direct lender associations can make to borrowers who supply less than 20 percent of the throughput to the processing and marketing operation. Section 1.11(a)(2) of the 1971 Act limits such loans by a FCB to 15 percent of the total of all outstanding loans of such bank. Section 2.4(a)(1) of the 1971 Act limits the authority of associations to make processing and marketing loans to borrowers who supply less than 20 percent of the throughput to "15 percent of the total of all outstanding loans of all direct lender associations in the district at the end of its preceding fiscal year."

The legislative history to section 1832 of the 1990 Farm Bill, which amends both sections 1.11 and 2.4 of the 1971 Act, states that processing and marketing loans to borrowers who supply less than 20 percent of the throughput are limited to "15 percent of the portfolio of the district bank".[4] This suggests that Congress intended these provisions to work together to impose a 15-percent districtwide limit on processing and marketing loans to borrowers who supply less than 20 percent throughput. From the legislative history, it appears that Congress may have intended the restrictions on processing and marketing loans to operate in a manner similar to the districtwide limitations on rural housing loans. Statutory limitations on rural housing are achieved by limiting rural housing loans to 15 percent of the outstanding loans of all associations in the FCB's chartered territory at the end of the bank's preceding fiscal year. However, unlike the statutory restrictions on rural housing loans, the statute does not prescribe procedures for ensuring that §§ 1.11(a)(2) and 2.4(a)(1) of the 1971 Act work together to ensure processing and marketing loans, where the applicant's throughput is less than 20 percent, do not exceed 15 percent of all outstanding loans in the district.

The FCA proposes to reconcile §§ 1.11(a)(2) and 2.4(a)(1) of the 1971 Act to achieve the congressional intent of limiting the aggregate of all financing provided by the FCBs and all direct lender associations in each district, for the basic processing and/or marketing operations of borrowers who supply on a sustained basis less than 20 percent of the annual throughput to 15 percent of the total of all outstanding loans in each FCB's chartered territory at the end of the bank's preceding fiscal year, in addition to reflecting the statutory limitations on FCBs and direct lender associations separately. To ensure compliance with the legislative intent, the FCA proposes to require each FCB, in conjunction with all associations chartered in the district, to adopt appropriate policies and procedures to identify and monitor eligible marketing and processing loans with less than 20 percent throughput prior to final loan approval in order to ensure that the 15-percent districtwide limit is not exceeded. The FCA invites comment on alternative methods for ensuring that §§ 1.11(a)(2) and 2.4(a)(1) of the 1971 Act can be reconciled to achieve the apparent intent of Congress to impose a 15-percent districtwide limitation.

III. Insurance Services

Section 4.29 of the Farm Credit Act of 1971 was amended by the 1990 Farm Bill to allow Farm Credit System banks and associations relief from former statutory requirements that the banks approve more than two insurers for each type of insurance program offered to Farm Credit System borrowers. Congress recognized "the possibility that System banks may be unable to satisfy the requirement that banks approve more than two insurers for each type of program." [5] The legislative history states that "System banks are * * * expected to make a reasonable and good faith effort to attract more than two qualified insurers to approve so that the bank or association may offer at least two insurers to borrowers * * *." The proposed amendments to § 618.8030 reflect the changes to section 4.29 of the 1971 Act. The proposed regulation would require the bank to document its efforts to attract additional qualified insurers for each type of insurance offered whenever it has not approved more than two insurers for each insurance program offered in every State of its chartered territory.

List of Subjects in 12 CFR Parts 613 and 618

Aged, Agriculture, Banks, banking, Civil rights, Credit, Fair housing, Insurance, Marital status discrimination, Religious discrimination, Reporting and recordkeeping requirements, Rural areas, Sex discrimination, Signs and symbols, Technical assistance.

For the reasons stated in the preamble, parts 613 and 618 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

1. The authority citation for part 613 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 5.9, 5.17; 12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2243, 2252.

Subpart B—Eligibility To Borrow From Farm Credit Banks, Agricultural Credit Banks, Production Credit Associations, Agricultural Credit Associations and Federal Land Credit Associations

2. Section 613.3045 is amended by revising the first sentence of paragraph (b)(2)(ii); redesignating paragraph (c) as new paragraph (e); and adding new paragraphs (c) and (d) to read as follows:

§ 613.3045 Financing of basic processing and marketing activities.

* * * * *

(b) * * *

(2) * * *

(ii) The applicant, or as provided for in paragraph (b)(2)(iii) of this section, the applicant processing or marketing unit and its owners, shall produce on a sustained basis some portion of the basic processing and/or marketing operation sufficient to demonstrate that such operation constitutes a logical and

[4] H.R. Conf. Rep. No. 916, 101st Cong. 1st Sess. 1133 (1990).

[5] *Id.*

actual extension of the applicant's agricultural or aquatic operation for financing vertical integration from the production stage through the basic processing and/or marketing stage. * * *

* * * * *

(c) Processing and marketing loans to eligible borrowers, who supply on a sustained basis less than 20 percent of the throughput, are subject to the following restrictions:

(1) The aggregate of such marketing and processing loans provided by the Farm Credit Bank and all associations in each district shall not exceed 15 percent of the total of all outstanding loans in the district at the end of the bank's preceding fiscal year; and,

(2) The aggregate of such marketing and processing loans provided by any Farm Credit Bank shall not exceed 15 percent of all outstanding loans made by such bank as a direct lender at the end of its preceding fiscal year; and

(3) The aggregate of such marketing and processing loans provided by any association shall not exceed 15 percent of all outstanding loans of all associations in the district at the end of the preceding fiscal year.

(d) Each Farm Credit Bank, in conjunction with all direct lending associations chartered in the district, shall adopt appropriate policies and procedures for identifying and monitoring loans subject to the limitations of paragraph (c) of this section sufficient to ensure that the 15-percent district wide limit is not exceeded.

* * * * *

PART 618—GENERAL PROVISIONS

3. The authority citation for part 618 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17; 12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252.

Subpart B—Member Insurance

4. Section 618.8030 is amended by revising paragraphs (b)(2) and (b)(3)(v) to read as follows:

§ 618.8030 Authorized insurance services.

* * * * *

(b) * * *

(2) In making insurance available through private insurers, each bank shall approve the programs of more than two insurers for each type of insurance offered in the bank's chartered territory, provided that more than two insurers for each type of insurance have proposed programs to the bank that will, in all likelihood, have long-term viability, and meet the requirements of § 618.8030(b)(3)(i) of this section. The banks shall make a reasonable and good faith effort to attract more than two qualified insurers for each insurance program offered to borrowers in all States of the bank's chartered territory. Where the bank is unable to offer more than two insurers, the bank shall document its efforts to attract additional qualified insurers for the affected insurance program and State. The banks may provide comparative information relating to costs and quality of approved programs and the financial condition of approved companies.

(3) * * *

(v) In making insurance available through approved insurers, the boards of directors of the bank or association shall make a reasonable and good faith effort to select and offer at least two approved insurers for each type of insurance made available to the members and borrowers. In the event that the bank or association has approved less than two insurers for any insurance program, such bank or association shall document the reasons why it is unable to offer members and borrowers additional insurers for the affected insurance program.

* * * * *

Dated: September 4, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-21500 Filed 9-6-91; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-150-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series Airplanes, Model DC-9-80 Series Airplanes, Model MD-88 Airplanes, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 series, Model DC-9-80 series, Model MD-88, and C-9 (Military) series airplanes, which currently requires repetitive inspections of the rudder actuator for internal hydraulic fluid leakage, and replacement if necessary, to ensure that degraded actuators are removed from service. This action would require a one-time inspection of certain rudder actuators at a reduced interval, due to the possibility of either improperly installed or missing cylinder gland seals. In addition, a modification of the rudder actuators would be required, which would constitute terminating action for the repetitive inspections. This proposal is prompted by reports of rudder actuators with degraded performance. This condition, if not corrected, could result in reduced rudder authority and uncontrollable airplane sideslip, should an engine failure occur at takeoff.

DATES: Comments must be received no later than October 29, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-150-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801; Attn: Business Unit Manager, Technical Publications & Technical Administrative Support, C1-L5B (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Walter S. Eierman, Aerospace Engineer, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; telephone (213) 988-5336.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-150-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On February 21, 1989, the FAA issued AD 89-06-06, Amendment 39-6150 (54 FR 11170, March 17, 1989), to require repetitive inspections of the rudder actuator for internal hydraulic fluid leakage, and replacement if necessary, to ensure that degraded actuators are removed from service. That action was prompted by reports of degraded performance rudder actuators found in service. This condition, if not corrected, could result in reduced rudder authority and uncontrollable airplane sideslip, should an engine failure occur at takeoff.

Since issuance of that AD, one operator of Model DC-9-80 series airplanes reported that, during the required inspections, there were three instances in which the rudder hydraulic actuator assemblies failed the "Inspect, Test, and Correct as Necessary" (ITCAN) test. Investigation revealed that the failure was due to either missing or incorrectly installed cylinder gland seals. These conditions allow internal fluid leakage, which could result in degradation of rudder authority that, in some cases, may go undetected.

Based on this investigation, the manufacturer has recommended that the initial inspection required by AD 89-06-06 be reduced from 1,500 flight hours to 500 flight hours for certain Model DC-9-80 series airplanes. The FAA has examined the manufacturer's findings, reviewed all available information, and concurs that the compliance time for the initial inspection must be reduced as recommended.

The FAA has reviewed and approved the following McDonnell Douglas service bulletins:

a. DC-9 Alert Service Bulletin A27-291, Revision 3, dated August 24, 1988, which describes procedures for inspection of the rudder actuator for internal hydraulic leakage, and replacement of the rudder actuator assembly if leakage is beyond certain limits. This service bulletin was referenced in the existing AD 89-06-06 as the appropriate service bulletin information source for the required inspection procedures.

b. MD-80 Alert Service Bulletin A27-318, dated June 10, 1991, which describes procedures for repetitive inspections of the rudder actuator for internal hydraulic fluid leakage (which may indicate missing or incorrectly installed gland seals), and replacement of the rudder actuator assembly if leakage is beyond certain limits. This service bulletin, which affects only Model DC-9-80 series airplanes and Model MD-88 airplanes, recommends that the initial and repetitive inspections be conducted at shorter intervals than those recommended for these inspections in DC-9 Alert Service Bulletin A27-291, Revision 3.

c. DC-9 Service Bulletin 27-301, Revision 1, dated May 24, 1991, which describes procedures for the modification of the rudder actuator. This modification (which involves replacement of piston rings and face seals, in conjunction with refinishing the surface of the cylinder barrel bore and removing the rudder pressure restrictor) is intended to increase the service life of the rudder actuator and reduce power loss if leakage occurs. (This modification was installed during production on Model DC-9-80 series airplanes and Model MD-88 airplanes, manufacturer's fuselage numbers 1568, 1589, 1601, and subsequent.)

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 89-06-06 with a new airworthiness directive that would continue to require repetitive inspections of the rudder actuators for internal hydraulic fluid leakage, and replacement of the rudder actuator assembly if leakage is beyond certain limits. However, it would reduce the currently-required compliance time for the initial and repetitive inspections for certain Model DC-9-80 series airplanes. The proposed AD would also require eventual modification of the rudder actuator on all airplanes in accordance with DC-9 Service Bulletin 27-301, Revision 1, dated May 24, 1991; this modification would constitute terminating action for repetitive inspections.

The applicability of this proposed rule differs from that of AD 89-06-06 in that it is limited to only those airplanes listed in the effectivity section of McDonnell Douglas DC-9 Service Bulletin 27-301, Revision 1, dated May 24, 1991; whereas, the applicability of AD 89-06-06 includes all Model DC-9 and Model DC-9-80 series airplanes and all Model MD-88 airplanes. Those airplanes not listed in the referenced service bulletin have been modified previously with the "terminating action modification" that would be required by this proposed rule.

There are approximately 1,598 Model DC-9 series, DC-9-80 series, and MD-88 airplanes of the affected design in the worldwide fleet. It is estimated that 926 airplanes of U.S. registry would be affected by this AD. It would take approximately 10 manhours per airplane to accomplish the inspection, and 22 manhours per airplane to accomplish the modification; the average labor cost would be $55 per manhour. Required parts for the modification are estimated at $197 per airplane. Based on these figures, the total cost impact of AD on U.S. operators is estimated to be $1,812,182, or $1,957 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6150 and by adding the following new airworthiness directive:

McDonnell Douglas: Docket No. 91-NM-150-AD. Supersedes AD 89-06-06.

Applicability: Model DC-9 series airplanes, Model DC-9-80 series airplanes, Model MD-88 airplanes, and C-9 (Military) series airplanes; serial numbers as listed in McDonnell Douglas DC-9 Service Bulletin A27-301, Revision 1, dated May 24, 1991; certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent uncontrollable airplane sideslip due to an ineffective rudder actuator, accomplish the following:

(a) For Model DC-9-11, -12, -13, -14, -15, -15F, -21, and -87 series airplanes:

(1) Within 500 flight hours after April 12, 1989 (the effective date of AD 89-06-06, Amendment 39-6150), unless already accomplished within the last 1,000 flight hours, inspect the rudder actuator for internal hydraulic fluid leakage in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A27-291, Revision 3, dated August 24, 1988.

(2) If the rudder actuator internal hydraulic fluid leakage is within the limits specified in that service bulletin, repeat the inspection at intervals not to exceed 1,500 flight hours.

(b) Except as provided in paragraph (c) of this AD, for Model DC-9-31, -32, -32F, -33, -34, -34F, -41, -51, -81, -82, -83, and MD-88 series airplanes:

(1) Within 1,500 flight hours after April 12, 1989 (the effective date of AD 89-06-06, Amendment 39-6150), unless already accomplished within the last 1,500 flight hours, inspect the rudder actuator for internal hydraulic fluid leakage in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A27-291, Revision 3, dated August 24, 1988.

(2) If the rudder actuator internal hydraulic fluid leakage is within the limits specified in that service bulletin, repeat the inspection at intervals not to exceed 3,000 flight hours.

(c) For Model DC-9-82, -83, and MD-88 series airplanes, serial numbers listed in McDonnell Douglas MD-80 Alert Service Bulletin A27-318, dated June 10, 1991:

(1) Within 1,500 flight hours after April 12, 1989 (the effective date of AD 89-06-06, Amendment 39-6150), or within 500 flight hours after the effective date of this amendment, whichever occurs earlier, inspect the rudder actuator assembly for internal hydraulic fluid leakage, in accordance with the Accomplishment Instructions of McDonnell Douglas MD-80 Alert Service Bulletin A27-318, dated June 10, 1991.

(2) If the rudder actuator internal hydraulic fluid leakage is within the limits specified in that service bulletin, repeat the inspection at intervals not to exceed 1,500 flight hours.

(d) If any inspection required by paragraph (a), (b), (c) of this AD reveals that the rudder actuator exceeds the internal hydraulic fluid leakage limit specified in McDonnell Douglas DC-9 Alert Service Bulletin A27-291, Revision 3, dated August 24, 1988, or McDonnell Douglas, MD-80 Alert Service Bulletin A27-318, dated June 10, 1991, as applicable, prior to further flight, replace the rudder actuator with a rudder actuator that is within those limits.

(e) For Model DC-9 series, Model DC-9-80 series, Model MD-88, and C-9 (Military) series airplanes: Within 6,000 flight hours after the effective date of this AD, modify the rudder actuator in accordance with the Accomplishment Instructions of McDonnell Douglas DC-9 Service Bulletin 27-301, Revision 1, dated May 24, 1991. This modification constitutes terminating action for the repetitive inspections required by this AD.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, Post Office Box 1771, Long Beach, California 90801; Attn: Business Unit Manager, Technical Publications & Technical Administrative Support, C1-L5B (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Renton, Washington, on August 28, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-21489 Filed 9-6-91; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ANE-31]

Proposed Control Zone for Sikorsky (Private) Heliport, Stratford, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to designate a control zone to encompass airspace surrounding the Sikorsky Heliport, Stratford, CT. This action will allow positive control of aircraft operations in the vicinity of the Heliport as well as afford maximum protection for aircraft making instrument approaches to the Heliport during instrument meteorological conditions. Airspace affected by designation of the control zone is a circular area that extends upward from the surface of the ground within a five statute mile radius of the Heliport. The hours of operation proposed are 0800 local to sunset, Monday through Saturday.

DATES: Comments must be received on or before October 9, 1991.

ADDRESSES: Send comments on the Rule in triplicate to: Manager, System Management Branch, Air Traffic Division, New England Region, Docket No. 91-ANE-31, Department of Transportation, Federal Aviation Administration, Burlington, MA 01803-5299.

The Official Docket may be examined in the Office of the Assistant Chief Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Charles M. Taylor, System Management Branch, ANE-530, Federal Aviation Administration, Burlington, MA 01803-5299; Telephone: (617) 270-2428.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ANE-31." The postcard will be date/time and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed

in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this NPRM by submitting a request to the Office of the Assistant Chief Counsel, ANE-7, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a control zone for Sikorsky (Private) Heliport, Stratford, CT. This action will allow positive control of aircraft operations in the vicinity of the Heliport as well as afford maximum protection for aircraft making instrument approaches to the Heliport during instrument meteorological conditions. In addition, the establishment of a control zone will greatly enhance aviation safety for all aircraft operating at the helicopter landing area. Section 171 of part 71 of the Federal Aviation Regulations was last republished in FAA Order 7400.6G, dated September 4, 1990.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small business entities under the Criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration propose to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Stratford, Connecticut [New]

Within a 5-mile radius of Sikorsky Heliport (Lat 41° 15′ 26″ N., Long. 73° 05′ 20″ W.), excluding the portion that coincides with the Bridgeport CT, Control zone. This control zone is effective from 0800 hours local time to sunset, Monday through Saturday, or during the specific dates and times established in advance by a Notice to Airmen which thereafter will be continuously published in the Airport/Facility Directory.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 91-21490 Filed 9-6-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

28 CFR Part 76

[Order No. 1524-91]

Claims Under the Radiation Exposure Compensation Act

AGENCY: Department of Justice.

ACTION: Proposed rules.

SUMMARY: The Radiation Exposure Compensation Act of 1990 authorizes the Attorney General of the United States to establish procedures for making compassionate payments as partial restitution to all eligible individuals, or to certain surviving beneficiaries, who contracted a specified radiation-related disease as a result of the federal government's atmospheric nuclear testing program. The Act authorizes the Attorney General to make these payments to individuals with a radiation-related disease that presumably resulted either from employment during a specified period of time in a uranium mine in Colorado, Utah, Arizona, Wyoming or New Mexico, or from physical presence for and during designated periods of time at or in certain specified areas downwind of the Nevada Test Site, the Pacific Proving Grounds, and the Trinity test site in Alamagordo, New Mexico. These regulations implement the authority granted to the Attorney General, and describe the extent and type of proof necessary to prove eligibility, and the procedures for filing a claim for compensation.

DATES: Public comments concerning this proposed rule must be received by the Department of Justice or bear a postmark no later than October 24, 1991.

ADDRESSES: Comments may be mailed to Helene M. Goldberg, Director, Torts Branch, Civil Division, P.O. Box 146, Benjamin Franklin Station, Washington, DC 20044; telephone number (202) 501-7020. The Department of Justice requests an original and two copies of all comments and documents filed.

FOR FURTHER INFORMATION CONTACT: Frank F. Krider, Special Counsel, Torts Branch, Civil Division, P.O. Box 146, Benjamin Franklin Station, Washington, DC 20044; (202) 219-0954.

SUPPLEMENTARY INFORMATION: The goal of these regulations is to create a procedure for adjudicating claims in a reliable, objective, and non-adversarial manner based on the use of existing records so that claims can be resolved quickly and at little cost to the United States or the person filing the claim. These regulations are by necessity lengthy and technical, and, thus, difficult for the layperson to understand. To alleviate this problem, the Radiation Exposure Compensation Unit (the Radiation Unit), which will administer these regulations, will draft a simply worded brochure for distribution to the public that will be the primary guide for learning about the Radiation Exposure Compensation Program and submitting an application for compensation. Additionally, the Radiation Unit will lend assistance to persons filing claims by assisting the claimant in completing an application, searching available sources of information for records establishing eligibility, working with the claimant on an individual basis when necessary to resolve issues, and generally providing help to the claimant regarding his/her application for compensation. The process is designed to be sufficiently simple that a claimant generally does not need an attorney to apply for compensation. Claimants are

encouraged to seek assistance from the Radiation Unit.

One of the unique features of these regulations is the prohibition in § 76.4 on the use of affidavits to prove eligibility, except in the limited circumstances specified in the regulations. This prohibition is included as a means of streamlining the compensation procedure and preventing fraud. Investigation has revealed an enormous body of reliable records which can be used to establish residency, onsite participation, employment history, medical condition and relationship to the decedent, when necessary. Numerous medical organizations, state and local governmental entities, and private organizations were consulted, and advised the Department that records dating back to the time of the atmospheric testing program have been maintained and are available.

The Radiation Exposure Compensation Act contains a requirement that the existence of the eligible cancers or other specified diseases be established by "written medical documentation" for a claimant to receive compensation under that statute. To implement that requirement, the Department consulted with the physicians at the National Cancer Institute and the National Institute for Occupational Safety and Health. Those consultations resulted in the hierarchy of documents listed after each disease in the regulations.

To assist the claimant in proving his/her medical condition, the Radiation Unit has established, and will continue to establish, relationships with state health authorities and private databases assembled by several leading medical researchers to verify the claimant's medical condition. In those instances where the claimant's medical condition can be verified by contact with those sources, the claimant need not personally provide any medical documentation. The use of state authorities and private databases to provide this verification will minimize the burden and expense on the claimant, prevent unnecessary reproduction of medical records by overburdened hospital and physician staffs, and eliminate the need for personnel in the Radiation Unit to review and handle large volumes of medical records.

The definition for onsite participation resulted from consultations with personnel at the Defense Nuclear Agency and the Department of Energy. Proof of such participation will be accomplished primarily by use of databases maintained by the Department of Energy and the Defense Nuclear Agency. If a claimant's onsite participation can be established by using these existing databases, no documentation will be requested from the claimant. Again, this use of existing databases will eliminate the need for the claimant to reproduce or obtain documentation, and will prevent the staff of the Radiation Unit from being overburdened with volumes of documents.

Investigation of sources of records in Utah, Arizona and Nevada confirmed that records exist which can readily establish proof of residency needed for "downwinders" submitting claims. Tax records, school records, utility records and religious records can adequately establish residency during the time periods set forth in the statute. For many claimants, proof of residency can be accomplished by staff members of the Radiation Unit through the use of a comprehensive set of telephone books and directories maintained by the Library of Congress in Washington, DC, covering the pertinent areas during the designated time periods. Contact has also been made with the Church of Jesus Christ of the Latter Day Saints, which maintains a highly accurate system of records. These records may be used to verify the residency of the claimant. Again, use of telephone records and church records will ease the obligations on the claimant, and provide the Radiation Unit with a rapid and reliable means of establishing residency and eligibility. The Radiation Unit will continue to establish contacts with sources of records for the purpose of creating a direct channel of verification between the Radiation Unit and the recordkeeping source.

The principal means of proof of employment in a uranium mine and exposure history will be through records of the federal government (including the Public Health Service studies of uranium miners), state regulatory agencies, mining companies, and medical research studies conducted in the specified states. The Radiation Unit is currently microfilming records existing in Colorado, and will continue to microfilm and preserve data regarding mining and exposure levels. The Radiation Unit, through a consultant, is cataloging every uranium mine in the specified states together with the dates of operation, and the operators. These data compilations will be used to assist miners in documenting their employment history and the amount of radiation to which they were exposed while employed in uranium mines.

Finally, these regulations take into account the unique differences of the Navajo Indians, many of whom were employed as uranium miners on and off the Navajo Reservation. To assist members of the Tribe who seek to establish familial relationship to prove they are eligible beneficiaries, the Radiation Unit will verify the familial relationship through direct liaison with the Tribe custodian of records and vital statistics. In addition, the Radiation Unit will work closely with the Indian Health Service to obtain medical records directly, and minimize the language difficulty and travel burden for these claimants. The Department will work with the Tribe to provide translation services for non-English speaking Navajo. Additionally, the Department has worked with and will continue to work with duly-designated Tribal officials to assist eligible members of the Tribe in filing claims.

List of Subjects in 28 CFR Part 76

Claims, Radiation Exposure Compensation Act.

Pursuant to the Radiation Exposure Compensation Act, Public Law 101–426, 104 Stat. 920 (1990), as amended by Public Law 101–510, 104 Stat. 1835 (1990), the Attorney General of the United States proposes to amend title 28 of the Code of Federal Regulations, chapter I, to add a new part 76 as follows:

PART 76—CLAIMS UNDER THE RADIATION EXPOSURE COMPENSATION ACT OF 1990

Subpart A—General

Sec.
76.1 Purpose.
76.2 General definitions.
76.3 Compensable claim categories under the act.
76.4 Burden of proof.
76.5 Documentation.

Subpart B—Eligibility Criteria for Claims Relating to Childhood Leukemia

76.10 Scope of subpart.
76.11 Definitions.
76.12 Criteria for eligibility.
76.13 Proof of physical presence.
76.14 Proof of exposure to fallout prior to age 21.
76.15 Proof of disease within the prescribed latency period.
76.16 Proof of medical condition.

Subpart C—Eligibility Criteria for Claims Relating to Certain Specified Diseases

76.20 Scope of subpart.
76.21 Definitions.
76.22 Criteria for eligibility.
76.23 Proof of physical presence.
76.24 Proof of exposure to fallout after age 20 for claims under § 76.22(b)(1), or before age 20 for claims under § 76.22(b)(4), or before age 40 for claims under § 76.22(b)(5), or before age 30 for claims under § 76.22(b)(7).

76.25 Proof of disease within the prescribed latency period.
76.26 Proof of medical condition.

Subpart D—Uranium Miners

76.30 Scope of subpart.
76.31 Definitions.
76.32 Criteria for eligibility.
76.33 Proof of employment in a uranium mine.
76.34 Proof of working level month exposure to radiation.
76.35 Proof of lung cancer.
76.36 Proof of non-malignant respiratory disease.

Subpart E—Eligibility Criteria for Claims by Onsite Participants

76.40 Scope of subpart.
76.41 Definitions.
76.42 Eligibility criteria.
76.43 Proof of participation onsite during a period of atmospheric nuclear testing.
76.44 Proof of medical condition.

Subpart F—Procedures

76.50 Attorney General's Delegation of Authority.
76.51 Filing of claims.
76.52 Review and resolution of claims.
76.53 Appeal procedures.
76.54 Attorneys.
76.55 Procedures for payment of claims.

Appendix to Part 76—Regulations Implementing the Radiation Exposure Compensation Act

Authority: Public Law 101–426, sections 6 (b) and (j), 104 Stat. 920 (1990) (44 U.S.C. 2210 Note).

Subpart A—General

§ 76.1 Purpose.

The purpose of these regulations is to implement the Radiation Exposure Compensation Act of 1990, which authorizes the Attorney General of the United States to establish procedures for making compassionate payments as partial restitution to all eligible individuals, or to certain surviving beneficiaries, who contracted a specified radiation-related disease as a result of the federal government's atmospheric nuclear testing program. The Act authorizes the Attorney General to make these payments to a limited class of individuals with a radiation-related disease that presumably resulted either from employment during a specified period of time in a uranium mine in Colorado, Utah, Arizona, Wyoming or New Mexico, or from their physical presence for and during designated periods of time at or in certain specified areas downwind of the Nevada Test Site, the Pacific Proving Grounds, and the Trinity Test Site at Alamogordo, New Mexico.

§ 76.2 General Definitions.

(a) *The Act* means the Radiation Exposure Compensation Act of 1990, Public Law 101–426, 104 Stat. 920 (1990), as amended by Public Law 101–510, 104 Stat. 1835 (1990).

(b) *Atmospheric Nuclear Test* means the intentional detonation of a nuclear device by the government of the United States of America where the release of radioactivity to the atmosphere was anticipated and was a factor in test planning. A list of all atmospheric nuclear tests conducted by the United States at the Nevada Test Site or the Pacific Proving Grounds may be found in the appendix to this part.

(c) *Child* means a recognized natural child, a step-child who lived with the claimant in a regular parent-child relationship, and an adopted child.

(d) *The Claim* means a petition for compensation under the Act filed with the Radiation Exposure Compensation Unit by a claimant or by his/her eligible surviving beneficiaries.

(e) *The Claimant* means the individual, living or deceased, who is alleged to satisfy the criteria for compensation in either section 4 or section 5 of the Act.

(f) *Contemporaneous Record* means any document created at or around the time of the event that is recorded in the document.

(g) *Eligible surviving beneficiary* means a spouse, child, parent, grandchild or grandparent who is entitled under section 1806(c)(4) (A) or (B) to file a claim and/or receive a payment on behalf of the deceased claimant.

(h) *Fallout* means the process or phenomenon of the descent to the earth's surface of particles contaminated with radioactive material from the radioactive debris cloud associated with the atmospheric detonation of a nuclear device.

(i) *Grandchild* means a child of a child of the claimant.

(j) *Grandparent* means a parent of a parent of the claimant.

(k) *Immediate family member* means a spouse or child.

(l) *Medical Document* means any contemporaneous record of any physician, hospital, clinic or other certified or licensed health care provider, or any other records routinely and reasonably relied on by physicians in making a diagnosis.

(m) *The Radiation Exposure Compensation Unit* or *Unit* means the component of the Constitutional and Specialized Tort Litigation Section of the Torts Branch of the Civil Division of the United States Department of Justice designated by the Attorney General to execute the powers, duties and responsibilities assigned to the Attorney General pursuant to sections 4(a)(1)(C), 4(a)(2)(ii), section 5(a)(ii), section 6, and any other pertinent provisions of the Radiation Exposure Compensation Act of 1990.

(n) *Parent* means the natural or adoptive father or mother of the claimant.

(o) *Spouse* means a wife or husband who was married to the claimant for the period of at least one (1) year immediately before the death of the claimant.

(p) *The Trust Fund* means the Radiation Exposure Compensation Trust Fund in the Department of the Treasury, administered by the Secretary of the Treasury pursuant to section 1803 of the Act.

§ 76.3 Compensable Claim Categories Under the Act.

(a) All claimants filing a claim for compensation under the Act must establish that they meet each and every criterion of eligibility for at least one of the following compensable categories designated in the Act:

(1) Claims of childhood leukemia by persons physically present in specified areas of Arizona, Nevada and Utah during designated time periods who were exposed to fallout from the atmospheric detonation of nuclear devices at the Nevada Test Site; the regulations governing these claims are set forth in subpart B.

(2) Claims relating to certain specified diseases by persons physically present in specified areas of Arizona, Nevada and Utah during designated time periods who were exposed to fallout from the atmospheric detonation of nuclear devices at the Nevada Test Site; the regulations governing these claims are set forth in subpart C.

(3) Claims relating to certain specified diseases by persons who were onsite participants during the atmospheric detonation of a nuclear device; the regulations governing these claims are set forth in subpart D.

(4) Claims relating to lung cancer or certain nonmalignant respiratory diseases by persons employed in (a) uranium mine(s) in Arizona, Colorado, New Mexico, Utah or Wyoming during a designated time period, and who were exposed to specified minimum levels of radiation during the course of their employment. The regulations governing these claims are set forth in subpart E.

(b) Any claim that does not meet all the criteria for at least one of these categories, as set forth in these Regulations, must be denied.

(c) A claimant, or his/her eligible surviving beneficiary, may file a claim for compensation under more than one

of the four categories set forth in paragraph (a). In accordance with section 7(b) of the Act, however, no claimant or eligible surviving beneficiary may receive payment under more than one of the categories set forth in paragraph (a). A claimant who establishes his/her eligibility under more than one of the categories in paragraph (a) will be deemed eligible, unless he/she elect otherwise, under that category which provides the greatest compensation to the claimant or the eligible surviving beneficiary.

(d) All claims for compensation under the Act must comply with the claims procedures and requirements set forth in the subpart F of these Regulations before any payment can be made from the Fund.

§ 76.4 Burden of Proof.

(a) The claimant bears the burden of proving by a preponderance of the evidence the existence of each and every criterion necessary to establish eligibility under any compensable claim category set forth in § 76.3(a). Proof by a preponderance of the evidence means that it is more likely than not that the proposition to be provided is true. Subject to the exceptions expressly provided in the Regulations, the claimant also bears the burden of providing to the Radiation Exposure Compensation Unit all documentary evidence necessary to establish any and all criteria for compensation set forth in these Regulations.

(b) No presumption of proof provided for in those regulations is to be considered inrrebuttable. A claimant will not be entitled to any presumption otherwise provided for in these regulations where reliable, material evidence is presented that tends to disprove the existence of the fact that is the subject of the presumption.

(c) Subject to the exceptions below, no written affidavits or declarations, by the claimant or any other person, will be accepted as proof of any criterion for eligibility or relied on in determining whether a claim meets the requirements of the Act for compensation. Written affidavits or declarations, subject to penalty for perjury, will be accepted only to prove:

(1) that there are no other eligible surviving beneficiaries entitled to payment under subpart F, § 76.1(e), (f), (g), or (h); or,

(2) that the claimant or eligible surviving beneficiary entitled to payment under the Act has received any payment made pursuant to a final award or settlement on a claim (other than a claim for worker's compensation) that is based on injuries incurred by the claimant arising from:

(i) Exposure to radiation in an affected area (as defined in subpart B or C) during a designated time period (as defined in subpart B or C) from the atmospheric detonation of a nuclear device; or,

(ii) Exposure to radiation in an underground uranium mine at any time during the period beginning January 1, 1947 and ending December 31, 1971; or

(iii) Exposure to radiation as a result of onsite participation in the atmospheric detonation of a nuclear device, as defined in subpart E.

(d) If an individual eligible for compensation under any of the compensable claim categories set forth in § 76.3(a) has died before filing a claim, a surviving beneficiary meeting the requirements of subpart F may file a claim for compensation on behalf of the decedent. In such a case, the eligible surviving beneficiary bears the burden of proving all requirements and providing all documentation that the decedent would have had to prove and provide had he/she filed a claim on his/her own behalf.

§ 76.5 Documentation.

(a) All documents submitted by a claimant or his/her eligible surviving beneficiary to prove any criteria provided for in these Regulations must be an original, or a certified copy of the original, unless it is presently impossible to obtain an original or certified copy of the original. If it is impossible for a claimant to provide an original or certified copy of an original, the claimant or eligible surviving beneficiary must provide a statement with the claim setting forth the reason why it is impossible.

(b) All documents submitted by a claimant or his/her eligible surviving beneficiary must bear sufficient indicia of authenticity or otherwise provide some guarantee of trustworthiness. The Radiation Exposure Compensation Unit reserves the right to refuse to accept as proof of any criteria of eligibility any submitted documentation that does not bear sufficient indicia of authenticity, or is in such physical condition, or contains such information, that otherwise indicates the document is not reliable or trustworthy.

Subpart B—Eligibility Criteria for Claims Relating to Childhood Leukemia

§ 76.10 Scope of Subpart.

The regulations in this Subpart describe the criteria for eligibility for compensation under section 4(a)(1) of the Act, and the type and extent of evidence that will be accepted as proof of the various criteria. Section 4(a)(1) of the Act provides for compassionate payments as partial restitution to individuals who were exposed to fallout from the atmospheric detonation of nuclear devices at the Nevada Test Site before the age of 21, and presumably as a result of such exposure, developed leukemia, other than chronic lymphocytic leukemia.

§ 76.11 Definitions.

(a) *Affected Area* means the following geographical descriptions, as they were recognized by the state in which they are located, as of October 15, 1990:

(1) In the State of Utah, the counties of Beaver, Garfield, Iron, Kane, Millard, Piute, Sevier and Washington;

(2) In the State of Nevada, the counties of Eureka, Lander, Lincoln, Nye, White Pine, and that portion of Clark County that consists of townships 13 through 16 at ranges 63 through 71;

(3) In the State of Arizona, that portion of the State that is north of the Grand Canyon and west of the Colorado River.

(b) *Physically Present* means being physically located at any place or places within the affected area for a substantial period of each day of the time period claimed.

(c) *Designated Time Period* means the period beginning on January 21, 1951 and ending on October 31, 1958, or the period beginning on June 30, 1962 and ending on July 31, 1962, whichever is appropriate.

(d) *First Exposure* or *Initial Exposure* means the date on which the claimant was first physically present in the affected area during the designated time period.

(e) *Onset* or *Incidence* of a specified compensable disease means the date the disease was first diagnosed by a physician.

(f) *Leukemia* means any medically-recognized form of acute or chronic leukemia, other than chronic lymphocytic leukemia.

§ 76.12 Criteria for Eligibility.

To establish eligibility for compensation under this Subpart, a claimant must show by a preponderance of the evidence that each of the following criteria are satisfied:

(a) The claimant was physically present in the affected area for either—

(1) A period of at least one year during the period beginning on January 21, 1951 and ending on October 31, 1958, or

(2) The entire period beginning on June 30, 1962 and ending on July 31, 1962;

(b) After such period of physical presence the claimant contracted leukemia (other than chronic lymphocytic leukemia);

(c) The claimant's initial exposure to fallout occurred prior to age 21;

(d) The onset of the leukemia occurred between two (2) and thirty (30) years after the date of first exposure to fallout.

§ 7613 Proof of Physical Presence.

(a) For purposes of establishing eligibility under § 76.12(a)(1), the claimant must have been physically present in the affected area for a total of one year, consecutively or cumulatively, during the period beginning on January 21, 1951, and ending on October 31, 1958. For purposes of establishing eligibility under § 76.12(a)(2), the claimant must have been physically present within the affected area continuously during the period beginning on June 30, 1962 and ending July 31, 1962.

(b) Subject to the limitation of § 76.4(c), proof of physical presence may be made by the submission of any trustworthy documents that, on their face or in conjunction with other submitted documents, establish that the claimant was present in the affected area during the designated time period.

(1) Contemporaneous documents relied on as proof of the claimant's physical presence will be given greater weight than documents created at a later date that refer to or attest to events or dates that are relied on by the claimant as proof of physical presence.

(2) Documents from the following sources are presumed to be trustworthy, if they bear sufficient indicia of authenticity:

(i) Records of the federal government, any tribal government, or any state, county, city or local governmental office, agency, department, board or other entity, or other public office or agency;

(ii) Records of any accredited public or private educational institution;

(iii) Records of any private utility licensed or otherwise approved by any governmental entity, including any such utility providing telephone services;

(iv) Records of any public or private library;

(v) Records of any state or local historical society;

(vi) Records of any religious organization that has tax-exempt status under section 501(c)(3) of the United States Internal Revenue Code;

(vii) Records of any regularly conducted business activity or entity;

(viii) Records of any recognized civic or fraternal association or organization;

(ix) Contemporaneous medical records.

(3) Claimants are encouraged to submit documents that have equivalent guarantees of trustworthiness, or that otherwise give reason to believe that the information recorded in the document, including the date that it was created, is accurate and reliable.

(c) An individual who resided or was employed on a full-time basis within the affected area is presumed to have been physically present during the time period of residence or full-time employment.

(d) For purposes of establishing eligibility under § 76.12(a)(1), proof of residence at one or more addresses within the affected area at two different dates one year or more apart and less than 2 years apart, and between January 21, 1951 and October 31, 1958, will be presumed to establish physical presence for the necessary one year period.

(e) For purposes of establishing eligibility under § 76.12(a)(1), proof of full-time employment at one location within the affected area at two different dates one year or more apart and less than 2 years apart, and between January 21, 1951 and October 31, 1958, will be presumed to establish physical presence for the necessary one year period.

(f) For purposes of establishing eligibility under § 76.12(a)(2), proof of residence within the affected area at least one day during the period June 30, 1962 to July 31, 1962, and proof of residence at the same address within six months before June 30, 1962, and six months after July 31, 1962, will be presumed to establish physical presence for the necessary one-month-and-one-day period.

(g) For purposes of establishing eligibility under § 76.12(a)(2), proof of full-time employment within the affected area at least one day during the period June 30, 1962 to July 31, 1962, and proof of full-time employment at the same location within three months before June 30, 1962, and three months after July 31, 1962, will be presumed to establish physical presence for the necessary one-month-and-one-day period.

(h) For purposes of establishing eligibility under § 76.12(a)(2), proof of residence or full-time employment at the same address or location on two separate dates at least two weeks apart within the time period June 30, 1962 to July 31, 1962 will be presumed to establish physical presence for the necessary one-month-and-one-day period.

(i) A claimant who was a participant in any study for scientific purposes conducted by or under the auspices of any public office or agency, or university medical school, or whose immediate family member was a participant in any such study, need not submit proof of physical residence at the time the claim is filed. The claimant must submit with the claim a Release of Personal Information, valid in the state in which the records are located, that authorizes the Radiation Exposure Compensation Unit to review records pertaining to residence created or acquired by the public office or agency, or university medical school, during the course of the study.

(1) If a family member of the claimant was a participant in any such study, and the claimant was not, the claimant must also submit evidence to show that the participant in the study was an immediate family member of the claimant, and that the claimant resided at the same address as the participant during that time period. Absent evidence to the contrary, all members of an immediate family are presumed to reside at the same address, including any children under the age of eighteen (18).

(2) If sufficient information exists within the records of the study to prove the claimant was physically present in the affected area for the specified period of time, the claimant will be so notified. In this instance, the claimant need not submit any proof of presence.

(3) If the records of the study are insufficient to prove the claimant was physically present in the affected area for the specified period of time, the claimant will be notified what residence information, if any, was accepted, and what additional information must be submitted to prove physical presence under this section.

§ 76.14 Proof of exposure to fallout prior to age 21.

(a) Proof of the claimant's date of birth must be established by written documentation containing the claimant's date of birth or a specific statement of age from which the claimant's date of birth can be established. Proof must be made by the submission of one of the following records:

(1) Birth or death certificate;

(2) Baptismal certificate;

(3) A driver's license or other record of a federal tribal, state, county, local or other public office or agency;

(4) Medical records.

(b) Absent other written evidence, the earliest date within the designated time period indicated on any records accepted by the Radiation Exposure Compensation Unit as proof of the claimant's physical presence in the affected area will be considered the

date the claimant was first exposed to fallout. Additional documentary evidence that proves the claimant was physically present in the affected area at an earlier date may be submitted.

§ 76.15 Proof of disease within the prescribed latency period.

(a) Sufficient written documentation must be submitted from which it can be determined that the onset of leukemia occurred more than two (2) years but less than thirty (30) years after the date the claimant was first exposed to fallout.

(b) Absent other written evidence, the earliest date within the designated time period indicated on any records submitted to prove the claimant's physical presence in the affected area will be considered the date the claimant was first exposed to fallout. Additional documentary evidence that proves the claimant was physically present in the affected area at an earlier date may be submitted.

§ 76.16 Proof of medical condition.

(a) Written medical documentation is required in all cases to prove to a reasonable degree of medical certainty that the claimant suffered from or suffers from any form of leukemia, other than chronic lymphocytic leukemia. The Radiation Exposure Compensation Unit will accept as proof of medical condition only that documentation described below in paragraphs (b) and (c). In those cases described below in paragraph (b), the claimant need not submit any medical documentation of disease at the time the claim is filed, although additional documentation may subsequently be required.

(b) If a claimant was diagnosed as having leukemia, other than chronic lymphocytic leukemia, in the State of Arizona, California, Colorado, Nevada, New Mexico, Utah or Wyoming, the claimant or eligible surviving beneficiary need not submit any medical documentation of disease at the time the claim is filed. The claimant or eligible surviving beneficiary must submit with the claim a Release of Personal Information, valid in the state of diagnosis, that authorizes the Radiation Exposure Compensation Unit to contact appropriate authorities in the designated state to determine if proof of the claimant's medical condition is contained in any state health records. The Radiation Exposure Compensation Unit will accept as proof of medical condition, without more, verification from the state that they possess medical records or abstracts of medical records of the claimant that contain a verified and verifiable diagnosis of one type of leukemia, other than chronic lymphocytic leukemia.

(1) If the designated state does not possess medical records or abstracts of medical records that contain a verified diagnosis of leukemia, the Radiation Exposure Compensation Unit will notify the claimant or eligible surviving beneficiary that he/she must submit the appropriate medical documentation, consistent with the requirements of this section.

(2) The absence of records in any of the designated states containing a verified and verifiable diagnosis of leukemia, will not be the basis, without more, for a denial of any claim.

(c) Proof that the claimant contracted leukemia, other than chronic lymphocytic leukemia, may be made by the submission of ONE of the following contemporaneous medical records, provided that the document contains an explicit statement of diagnosis or such other information or data from which a physician can make a diagnosis of leukemia to a reasonable degree of medical certainty. The medical documentation submitted must contain sufficient information from which physicians with expertise in the diagnosis of leukemia can determine the type of leukemia contracted by the claimant. The documents below are listed in order of priority: a claimant or eligible surviving beneficiary *must* submit the document first appearing on the list that exists. A claimant or eligible surviving beneficiary may submit a document of lower priority only if no document of higher priority is believed to exist or to be readily available.

(1) Bone marrow biopsy or aspirate report;

(2) Peripheral white blood cell differential count report;

(3) Autopsy report;

(4) Hospital discharge summary;

(5) Physician summary;

(6) Death certificate, provided that it is signed by the treating physician at the time of the patient's death.

Subpart C—Eligibility Criteria for Claims Relating to Certain Specified Diseases

§ 76.20 Scope of subpart.

The regulations in this Subpart described the criteria for eligibility for compensation under sections 4(a)(2) (A) and (B) of the Act, and the type and extent of evidence that will be accepted as proof of the various criteria. Sections 4(a)(2) (A) and (B) of the Act provide for compassionate payments as partial restitution to individuals who contracted at least one of a series of specified diseases, presumably as a result of exposure to fallout from the atmospheric detonation of nuclear devices at the Nevada Test Site during the time period beginning on January 21, 1951 and ending on October 31, 1958, or the period beginning on June 30, 1962 and ending on July 31, 1962.

§ 76.21 Definitions.

(a) The definitions listed in § 76.11 are hereby incorporated by reference and are intended to apply to the same terms as used in this subpart.

(b) *Specified Compensable Diseases* means leukemia (other than chronic lymphocytic leukemia), multiple myeloma, lymphomas (other than Hodgkin's disease), and primary cancer of the: Thyroid, female breast, esophagus, stomach, pharynx, small intestine, pancreas, bile ducts, gall bladder and liver.

(c) The terms multiple myeloma, lymphoma, Hodgkin's disease, primary cancer of the thyroid, primary cancer of the female breast, primary cancer of the esophagus, primary cancer of the stomach, primary cancer of the pharynx, primary cancer of the small intestine, primary cancer of the pancreas, primary cancer of the bile ducts, primary cancer of the gall bladder and primary cancer of the liver mean the physiological condition or conditions that are recognized by the National Cancer Institute under those names or nomenclature, or under any previously accepted or commonly used names or nomenclature.

(d) *Heavy Smoker* means an individuals who smokes or smoked more than 20 pack years of any kind of tobacco cigarette products; one pack year is defined as an average of 20 cigarettes per day for one year. This definition does not include the use of cigars or pipe tobacco, or any tobacco products that are used without being lighted.

(e) *Heavy Drinker* means in individual who consumes or consumed on average for five (5) years at least 4 drinks per day with one and one-half ounces of alcohol, or 4 six-ounce servings per day of wine, or four twelve-ounce servings per day of beer.

(f) *Heavy Coffee Drinker* means an individual who consumes or consumed on average more than 15 6-ounce portions of regular or decaffeinated coffee per day for twenty (20) years.

(g) *Indication of Disease* means any medically significant information that suggests the presence of a disease, whether or not the presence of the disease is later confirmed:

§ 76.22 Criteria for eligibility.

To establish eligibility for compensation under this Subpart, a claimant must show by a preponderance of the evidence that each of the following criteria are satisfied:

(a) The claimant was physically present in the affected area for either,

(1) A period of at least two years during the period beginning on January 21, 1951 and ending on October 31, 1958, or

(2) The entire period beginning on June 30, 1962 and ending on July 31, 1962;

(b) The claimant contracted one (or more) of the following specified compensable diseases:

(1) Leukemia, other than chronic lymphocytic leukemia, provided that:

(i) The claimant's initial exposure occurred after the age of 20, and

(ii) The onset of the disease was between 2 and 30 years of first exposure;

(2) Multiple myeloma, provided onset was at least 5 years after first exposure;

(3) Lymphomas, other than Hodgkin's disease, provided onset was at least 5 years after first exposure;

(4) Primary cancer of the thyroid, provided,

(i) The claimant's initial exposure occurred by the age of 20, and

(ii) Onset was at least 5 years after first exposure;

(5) Primary cancer on the female breast, provided,

(i) The claimant's initial exposure occurred prior to age 40, and

(ii) Onset was at least 5 years after first exposure;

(6) Primary cancer of the esophagus, provided,

(i) Onset was at least 5 years after first exposure, and

(ii) The claimant was not a heavy smoker, and

(iii) The claimant was not a heavy drinker;

(7) Primary cancer of the stomach, provided,

(i) Initial exposure occurred prior to age 30, and

(ii) Onset was at least 5 years after first exposure;

(8) Primary cancer of the pharynx, provided,

(i) Onset was at least 5 years after first exposure, and

(ii) The claimant was not a heavy smoker;

(9) Primary cancer of the small intestine, provided onset was at least 5 years after first exposure;

(10) Primary cancer of the pancreas, provided,

(i) Onset was at least 5 years after first exposure, and

(ii) The claimant was not a heavy smoker, and

(iii) The claimant was not a heavy coffee drinker;

(11) Primary cancer of the bile ducts, provided onset was at least 5 years after first exposure;

(12) Primary cancer of the gall bladder, provided onset was at least 5 years after first exposure;

(13) Primary cancer of the liver, provided,

(i) Onset was at least 5 years after first exposure, and

(ii) There is no indication of the presence of hepatitis B, and

(iii) There is no indication of the presence of cirrhosis.

§ 76.23 Proof of physical presence.

(a) For purposes of establishing eligibility under § 76.22(a)(1), the claimant must have been physically present in the affected area for a total of two years, consecutively or cumulatively, during the period beginning on January 21, 1951, and ending on October 31, 1958. For purposes of establishing eligibility under § 76.22(a)(2), the claimant must have been physically present within the affected area during the entire period beginning on June 30, 1962 and ending July 31, 1962.

(b) Proof of physical presence may be made in accordance with the provisions of subpart B, § 76.13 (b) and (c).

(c) For purposes of establishing eligibility under § 76.22(a)(1), proof of residence at one or more addresses within the affected area at two different dates two (2) years or more apart and less than 3 years apart, and between January 21, 1951 and October 31, 1958, will be presumed to establish physical presence for the necessary two year period.

(d) For purposes of establishing eligibility under § 76.22(a)(1), proof of full-time employment at one location within the affected area at two different dates two (2) years or more apart and less than 3 years apart, and between January 21, 1951 and October 31, 1958, will be presumed to establish physical presence for the necessary two year period.

(e) For purposes of establishing eligibility under § 76.22(a)(2), proof can be made in accordance with the provisions of subpart B, § 76.13 (f), (g), and (h).

(f) A claimant who was a participant in any study for scientific purposes conducted by or under the auspices of any public office or agency, or university medical school, or whose immediate family member was a participant in any such study, need not submit proof of physical residence at the time the claim is filed. Proof can be made in accordance with the provisions of Subpart B, section 76.13(i).

§ 76.24 Proof of exposure to fallout after age 20 for claims under § 76.22(d)(1), or before age 20 for claims under § 76.22(b)(4), or before age 40 for claims under § 76.22(b)(5), or before age 30 for claims under § 76.22(b)(7).

(a) If a claimant has identified the specific compensable disease that he/she contracted as either leukemia (other than chronic lymphocytic leukemia), cancer of the female breast, or cancer of the stomach, then he/she must submit proof of date of birth, *and* proof of physical presence in the affected area during the designated time period from which it can be determined that the claimant was first exposed to fallout after the age of 20 (for leukemia, other than chronic lymphocytic), or before the age of 20 (for cancer of the thyroid), or before the age of 40 (for cancer of the female breast), or before the age of 30 (for cancer of the stomach).

(b) Proof of the claimant's date of birth must be established in accordance with the provisions of Subpart B, § 76.14(a).

(c) A claimant need not submit additional evidence of proof of physical presence if the evidence they submitted to establish physical presence under § 76.23 indicates that he/she was in the affected area prior to age 20, 30, or 40, as is appropriate. Absent other written evidence, the earliest date indicated on any records accepted by the Radiation Exposure Compensation Unit as proof of the claimant's physical presence in the affected area within the period beginning on January 21, 1951 and ending on October 31, 1958, or within the period beginning on June 30, 1962 and ending on July 31, 1962, will be considered the date the claimant was first exposed to fallout. Additional documentary evidence that proves the claimant was physically present in the affected area at an earlier date may be submitted.

§ 76.25 Proof of disease within the prescribed latency period.

(a) Sufficient written documentation must be submitted from which it can be determined that,

(1) For claims of leukemia, the onset of leukemia occurred more than two (2) years but less than thirty (30) years after the date the claimant was first exposed to fallout;

(2) For claims of any other specified compensable disease, that the onset of the disease occurred more than five (5)

years after the date the claimant was first exposed to fallout.

(b) Absent other written evidence, the earliest date indicated on any records accepted by the Radiation Exposure Compensation Unit as proof of the claimant's physical presence in the affected area within the designated time period will be considered the date the claimant was first exposed to fallout. Additional documentary evidence that proves the claimant was physically present in the affected area at an earlier date may be submitted.

§ 76.26 Proof of medical condition

(a) Written medical documentation is required in all cases to prove to a reasonable degree of medical certainty that the claimant suffered from or suffers from any specified compensable disease. The Radiation Exposure Compensation Unit will accept as proof of medical condition only that documentation described below in paragraphs (b), (c), and (d). In those cases described below in paragraph (b), the claimant or eligible surviving beneficiary need not submit any medical documentation of disease at the time the claim is filed. In those cases described below in paragraph (c), the claimant or eligible surviving beneficiary need only submit one or a very limited number of designated medical documents to prove the claimant contracted one of the specified compensable diseases. For claims arising from a specified compensable disease listed in paragraph (d), the claimant or eligible surviving beneficiary must submit the additional medical documentation prescribed in that section.

(b) If a claimant was diagnosed at any time as having one of the specified compensable diseases in the State of Arizona, California, Colorado, Nevada, New Mexico, Utah or Wyoming, the claimant or eligible surviving beneficiary need not submit any medical documentation of disease at the time the claim is filed. The claimant or eligible surviving beneficiary must submit with the claim a Release of Personal Information, valid in the state of diagnosis, that authorizes the Radiation Exposure Compensation Unit to contact appropriate authorities in the designated state to determine if proof of the claimant's medical condition is contained in any state health records. The Radiation Exposure Compensation Unit will contact appropriate authorities in the designated state to determine if proof of the claimant's medical condition is contained in any state health records. The Radiation Exposure Compensation Unit will accept as proof of medical condition, without more, the verification of the state cancer or tumor registry that they possess medical records or abstracts of medical records of the claimant that contain a verified diagnosis of one of the specified compensable diseases.

(1) If the designated state does not possess medical records or abstracts of medical records that contain a verified diagnosis of one of the specified compensable cancers, the Radiation Exposure Compensation Unit will notify the claimant or eligible surviving beneficiary that they must submit the appropriate medical documentation, consistent with the requirements of this section.

(2) The absence of appropriate records in any of the designated states that prove the claimant has one of the specified compensable disease will not be the basis, without more, for a denial of any claim.

(c) Proof that the claimant contracted a specified compensable disease may be made by the submission of one of the following contemporaneous medical records, provided that the specified document contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities with the National Cancer Institute can make a diagnosis to a reasonable degree of medical certainty. The medical documentation submitted under this section to establish that the claimant contracted leukemia or a lymphoma must contain sufficient information from which the appropriate authorities with the National Cancer Institute can determine the type of leukemia or lymphoma contracted by the claimant. The documents listed for each specified compensable disease are in order of priority: a claimant must submit the document first appearing on the list that exists. A claimant may submit a document of lower priority only if no document of higher priority is believed to exist or be readily available.

(1) *Multiple myeloma.*

(i) Pathology report of tissue biopsy;

(ii) Autopsy report;

(iii) Report of serum electrophoresis;

(iv) One of the following summary medical reports:

(A) Physician summary report;

(B) Hospital discharge summary report;

(C) Hematology summary or consultation report;

(D) Oncology summary or consultation report;

(E) X-ray report;

(v) Death certificate, provided that it is signed by the claimant's treating physician at the time of death.

(2) *Lymphomas.*

(i) Pathology report of tissue biopsy;

(ii) Autopsy report;

(iii) One of the following summary medical reports:

(A) Physician summary report;

(B) Hospital discharge summary report;

(C) Hematology consultation or summary report;

(D) Oncology consultation or summary report;

(iv) Death certificate, provided that it is signed by the claimant's treating physician at the time of death.

(3) *Cancer of the thyroid.*

(i) Pathology report of tissue biopsy or fine needle aspirate;

(ii) Autopsy report;

(iii) One of the following summary medical reports:

(A) Physician summary report;

(B) Hospital discharge summary;

(C) Operative summary report;

(D) Oncology summary or consultation report;

(iv) Death certificate, provided that it is signed by the claimant's treating physician at the time of death.

(4) *Cancer of the female breast.*

(i) Pathology report of tissue biopsy or surgical resection;

(ii) Autopsy report;

(iii) One of the following summary medical reports:

(A) Physician summary report;

(B) Hospital discharge summary;

(C) Operative report;

(D) Oncology summary or consultation report;

(E) Radiotherapy summary or consultation report;

(iv) Report of mammogram;

(v) Report of bone scan;

(vi) Death certificate, provided that it is signed by the claimant's treating physician at the time of death.

(5) *Cancer of the esophagus.*

(i) Pathology report of tissue biopsy or surgical resection;

(ii) Autopsy report;

(iii) Endoscopy report;

(iv) One of the following medical reports:

(A) Physician summary report;

(B) Hospital discharge summary report;

(C) Operative report;

(D) Radiotherapy report;

(E) Oncology consultation or summary report;

(v) One of the following radiological studies:

(A) Esophagram;

(B) Barium swallow;

(C) Upper gastrointestinal (GI) series;

(D) Computerized tomography (CT) scan;

(E) Magnetic resonance imaging (MRI);

(vi) Death certificate, provided that it is signed by the claimant's treating physician at the time of death.

(6) *Cancer of the stomach.*

(i) Pathology report of tissue biopsy or surgical resection;

(ii) Autopsy report;

(iii) Endoscopy or gastroscopy report;

(iv) One of the following medical reports:

(A) Physician summary report;

(B) Hospital discharge summary report;

(C) Operative report;

(D) Radiotherapy report;

(E) Oncology summary report;

(v) One of the following radiological studies:

(A) Barium swallow;

(B) Upper gastrointestinal (GI) series;

(C) Computerized tomography (CT) series;

(D) Magnetic resonance imaging (MRI);

(vi) Death certificate, provided that it is signed by the claimant's treating physician at the time of death.

(7) *Cancer of the pharynx.*

(i) Pathology report of tissue biopsy or surgical resection;

(ii) Autopsy report;

(iii) Endoscopy report;

(iv) One of the following medical records:

(A) Physician summary;

(B) Hospital discharge summary;

(C) Report of otolarygology examination;

(D) Radiotherapy summary report;

(E) Oncology summary report;

(F) Operative report;

(v) Report of one of the following radiological studies:

(A) Laryngograms;

(B) Tomograms soft tissue lateral radiographs;

(C) Computerized tomography (CT) scan;

(D) Magnetic resonance imaging (MRI);

(vi) Death certificate, provided that it is signed by the claimant's treating physician at the time of death.

(8) *Cancer of the small intestine.*

(i) Pathology report of tissue biopsy;

(ii) Autopsy report;

(iii) Endoscopy report, provided the examination covered the duodenum and parts of the jejunum;

(iv) Colonoscopy report, providing the examination covered the distal ileum;

(v) One of the following medical reports:

(A) Physician summary report;

(B) Hospital discharge summary;

(C) Report of gastroenterology examination;

(D) Operative report;

(E) Radiotherapy summary report;

(F) Oncology summary or consultation report;

(vi) Report of one of the following radiologic studies:

(A) Upper gastrointestinal (GI) series with small bowel follow through;

(B) Angiography;

(C) Computerized tomography (CT) scan;

(D) Magnetic resonance imaging (MRI);

(vii) Death certificate, provided that it is signed by the claimant's treating physician at the time of death.

(9) *Cancer of the pancreas.*

(i) Pathology report of tissue biopsy or fine needle aspirate;

(ii) Autopsy report;

(iii) One of the following medical reports:

(A) Physician summary report;

(B) Hospital discharge summary report;

(C) Radiotherapy summary report;

(D) Oncology summary report;

(iv) Report of one of the following radiographic studies:

(A) Endoscopic retrograde cholangiopancreatography (ERCP)

(B) Upper gastrointestinal (GI) series;

(C) Arteriography of the pancreas;

(D) Ultrasonography;

(E) Computerized tomography (CT) scan;

(F) Magnetic resonance imaging (MRI);

(v) Death certificate, provided that it is signed by the claimant's treating physician at the time of death.

(10) *Cancer of the bile duct.*

(i) Pathology of tissue biopsy or surgical resection;

(ii) Autopsy report;

(iii) One of the following medical reports:

(A) Physician summary report;

(B) Hospital discharge summary report;

(C) Operative report;

(D) Gastroenterology consultation report;

(E) Oncology summary or consultation report;

(iv) Report of one of the following radiographic studies:

(A) Ultrasonography;

(B) Endoscopic retrograde cholangiography;

(C) Percutaneous cholangiography;

(D) Computerized tomography (CT) scan;

(v) Death certificate, provided that it is signed by the claimant's treating physician at the time of death.

(11) *Cancer of the gall bladder.*

(i) Pathology report of tissue from surgical resection;

(ii) Autopsy report;

(iii) One of the following medical reports:

(A) Physician summary report;

(B) Hospital discharge summary report;

(C) Operative report;

(D) Radiotherapy report;

(E) Oncology summary or report;

(iv) Death certificate, provided that it is signed by the claimant's treating physician at the time of death.

(12) Cancer of the liver.

(i) Pathology report of tissue biopsy or surgical resection;

(ii) Autopsy report;

(iii) One of the following medical reports:

(A) Physician summary report;

(B) Hospital discharge summary report;

(C) Oncology summary report;

(D) Operative report;

(E) Gastroenterology report;

(iv) Death certificate, provided that it is signed by the claimant's treating physician at the time of death.

(d) If the claimant or eligible surviving beneficiary is claiming eligibility under this Subpart for primary cancer of the esophagus, stomach, pharynx, pancreas, or liver, the claimant or eligible surviving beneficiary must submit in addition to proof of the disease, all medical records listed below from the first known hospital or other medical facility where the claimant was diagnosed as having the disease, for a period six (6) months before and six (6) months after the date of diagnosis:

(1) All history and physical examination reports;

(2) All operative reports;

(3) All pathology reports;

(4) All physician or hospital discharge summaries.

Subpart D—Uranium Miners

§ 76.30 Scope of subpart.

The regulations in this subpart define the eligibility criteria for compensation under section 5 of the Act, and the type and extent of evidence that will be accepted as proof of the prescribed criteria. Section 5 provides for compassionate payments as partial restitution to individuals who contracted lung cancer or one of a limited number of non-malignant respiratory diseases as a result of exposure to defined minimum levels of radiation during employment in a uranium mine or uranium mines at any time during the period beginning January 1, 1947 and ending December 31, 1971.

§ 76.31 Definitions.

(a) *Employment In A Uranium Mine* means physical labor or any other mining activities involving the extraction of uranium ore or preparation of extracted uranium ore, that principally occurred below ground surface in a uranium mine, for any form of compensation.

(b) *Uranium Mine* means an excavation beneath the surface of the ground, regardless of the means of access, the primary or a significant purpose of which was the extraction of uranium ore.

(c) *Working Level Month* means radiation exposure at the level of one working level every work day for a month, or an equivalent exposure over a greater or lesser amount of time.

(d) *Working Level* means the concentration of the short half-life daughters of radon that will release 1.3×10^5 million electron volts of alpha energy per liter of air;

(e) *Non-smoker* means an individual who never smoked tobacco cigarette products or smoked less than the amount defined in paragraph (f), below.

(f) *Smoker* is defined to mean an individual who smokes or smoked an average of 5 pack years or more prior to his/her employment in a uranium mine, or an average of 1 pack year or more of tobacco cigarette products contemporaneously with uranium mining; a pack year is defined in subpart C, § 76.21(d).

(g) *Onset* or *Incidence* is defined to mean the same as the definition set forth in subpart B, § 76.11(e).

(h) *Primary Lung Cancer* means any physiological condition of the lung or any of its tissue that is recognized under that name or nomenclature by the National Cancer Institute. The term includes cancer *in situ*.

(i) *Nonmalignant respiratory disease* means any of the following:

(1) Pulmonary fibrosis, fibrosis of the lung, or

(2) Cor pulmonale related to fibrosis of the lung, or

(3) Moderate or severe silicosis or pneumoconiosis, provided that the claimant, whether an Indian or non-Indian,

(i) Worked in a uranium mine or mines located on or within an Indian Reservation, and

(ii) Worked in such a mine or mines for a period of time sufficient to meet the minimum working level criteria for the claimant set forth in § 76.32(c).

(j) *Fibrosis of the Lung* or *Pulmonary Fibrosis* means chronic inflammation and progressive thickening of the pulmonary alveolar walls, leading to deficient oxygenation of the blood, with steadily progressive dyspnea and hypoxemia.

(k) *Cor pulmonale* means heart disease, including hypertrophy of the right ventricle, due to pulmonary hypertension secondary to fibrosis of the lung.

(l) *Silicosis* means a pneumoconiosis due to the inhalation of the dust of stone, sand, or flint containing silicon dioxide, characterized by the formation of generalized nodular fibrotic changes in both lungs.

(m) *Pneumoconiosis* means a chronic lung disease resulting from inhalation and deposition in the lung of substantial quantities of particulate matter, and the tissue reaction to the presence of the particulate matter. For the purposes of this Act, the claimant's exposure to the particulate matter that lead to the disease must have occurred during employment in a uranium mine.

(n) *Dyspnea* means shortness of breath.

(o) *Indian Reservation* means territory held in trust by the United States for any Indian Tribe at any time between January 1, 1947 and December 31, 1971.

(p) *Designated Time Period* means any time during the period beginning on January 1, 1947 and ending on December 31, 1971.

(q) *Specified States* means the states of Arizona, Colorado, New Mexico, Utah and Wyoming.

(r) *Readily Available Documentation* means documents in the possession, custody or control of the claimant or an immediate family member.

(s) *Certified "B" Reader* means a physician who has demonstrated proficiency in evaluating chest roentgenograms (x-rays) for quality and for the presence of pneumoconiosis and other pulmonary diseases by passing an examination and being certified (and recertified, as may be appropriate) by the Division of Respiratory Disease Studies of the National Institute of Occupational Safety and Health. A list of certified "B" readers is available from the Radiation Exposure Compensation Unit upon request.

§ 76.32 Criteria for eligibility.

To establish eligibility for compensation under this Subpart, a claimant or eligible surviving beneficiary must show by a preponderance of the evidence that each of the following criteria are satisfied:

(a) The claimant was employed in a uranium mine or mines in the states of Arizona, Colorado, New Mexico, Wyoming or Utah;

(b) The claimant was so employed at some time during the period beginning on January 1, 1947 and ending on December 31, 1971;

(c) The claimant contracted primary lung cancer or a nonmalignant respiratory disease, and

(1) If a non-smoker, the claimant was exposed during the course of his/her employment in a uranium mine to more than 200 working level months of radiation, or (2) If a smoker, then

(i) If the incidence of the cancer or the non-malignant respiratory disease occurred before the age of 45, the claimant was exposed during the course of his/her employment in a uranium mine to more than 300 working level months of radiation; or

(ii) If the incidence of the cancer or the non-malignant respiratory disease occurred after the age of 45, the claimant was exposed during the course of his/her employment in a uranium mine to more than 500 working level months of radiation.

§ 76.33 Proof of employment in a uranium mine.

(a) Claimants or surviving eligible beneficiaries who possess readily available documentation of proof of employment in a uranium mine for any length of time during the designated time period must submit this documentation to the Radiation Exposure Compensation Unit with their claim.

(1) To be eligible under this paragraph, a claimant must submit record(s) as proof of employment in a uranium mine that contain the name of the company for which the claimant worked or the name of the owner or operator of the mine where claimant worked.

(i) Where it is not apparent from the face of the record or known to the Radiation Exposure Compensation Unit, the available records of the Atomic Energy Commission (AEC) will be reviewed to determine if the company, owner or operator identified in the record mined and sold uranium to the United States during the time period identified in the record.

(ii) If the Radiation Exposure Compensation Unit is not able to verify that the company, owner or operator identified in the submitted records mined and sold uranium to the government during this period, the Unit will contact the claimant or eligible surviving beneficiary and request additional records from which these facts can be determined.

(2) Records will be accepted as proof of employment only for the period shown on the document.

(b) Based upon information provided by the claimant or eligible surviving beneficiary in the claim application, the Radiation Exposure Compensation Unit will search the sources listed below for records containing information that tends to prove the claimant was employed in a uranium mine during the designated time period.

(1) Records of the AEC, or its successor agency, the Department of Energy (DoE);

(2) Records of the Public Health Service (PHS), including:

(i) Records created by or gathered by the PHS in the course of any health studies conducted of uranium miners during or including the period 1947–1971;

(ii) Census and other employment data on uranium miners gathered by the PHS during the period 1947–1971;

(3) Records of regulatory agencies of the states of Arizona, Colorado, New Mexico, Utah and Wyoming relating to uranium mines or uranium miners;

(4) Records gathered or created in the course of federally-supported health-related studies of uranium miners in any of the specified states. Records generated in the course of any such health-related study that contain information tending to prove that a claimant does not meet the eligibility criteria for compensation under this Subpart will be used as a basis for denying compensation only after:

(i) The claimant or surviving eligible beneficiary has been informed of the adverse information and the way in which it reflects adversely on his/her claim for compensation, and

(ii) The claimant or surviving eligible beneficiary is given sufficient opportunity to produce evidence to the contrary.

(c) All claimants or surviving eligible beneficiaries filing for compensation under this Subpart must submit with the claim a Release of Personal Information, valid in the specified states, that authorizes the Radiation Exposure Compensation Unit to obtain pertinent employment records of any company for which the claimant was employed as a uranium miner in any one or more of the specified states during the designated time period.

(1) If sufficient information exists within the records of the company(ies) identified by the claimant or eligible surviving beneficiary to prove that the claimant was employed in a uranium mine in one of the specified states during the designated time period, the claimant or eligible surviving beneficiary will be so notified. In this instance, the claimant or eligible surviving beneficiary need not submit any additional proof of employment.

(2) If the records of the company(ies) identified by the claimant or eligible surviving beneficiary are insufficient to prove that he/she was employed in a uranium mine in one of the specified states during the designated time period, the claimant or eligible surviving beneficiary will be notified what information, if any, was accepted, and what additional information must be submitted.

(3) Records of any company identified by the claimant or eligible surviving beneficiary that contain information tending to prove that claimant does not meet the eligibility criteria for compensation under this Subpart will be used as a basis for denying compensation only after:

(i) The claimant or surviving eligible beneficiary has been informed of the adverse information and the way in which it reflects adversely on his/her claim for compensation, and

(ii) The claimant or surviving eligible beneficiary is given sufficient opportunity to produce evidence to the contrary.

(4) The absence of records in any company identified by the claimant or eligible surviving beneficiary that tend to prove the claimant was employed in a uranium mine by that company in one of the specified states during the designated time period will not be the basis for a denial of the claim.

(d) If the Radiation Exposure Compensation Unit is unable to locate sufficient records in any of the sources listed in paragraphs (b) or (c) to prove the claimant was employed in a uranium mine in a specified stated during the designated time period, the Unit will so inform the claimant or eligible surviving beneficiary. It is then the obligation of the claimant or eligible surviving beneficiary to produce sufficient written documentation to establish proof of employment.

(1) The Unit will inform the claimant or eligible surviving beneficiary of any information obtained from the sources listed in paragraphs (b) and (c) that tends to establish their employment in a uranium mine during the designated time period and in one of the designated states. The Unit will also inform the claimant or eligible surviving beneficiary what additional facts need to be proved to establish proof of employment.

(2) Records that will be accepted as proof of employment in a uranium mine during the designated time period include, but are not limited to those listed below, provided the record contains the name, or other unique means of identification of the claimant, and the dates of employment. The records submitted must, separately or in conjunction with each other, contain information indicating that the claimant's employment occurred principally below ground, or such information from which this fact can be ascertained.

(i) Records of the Social Security Administration;

(ii) Records of the owner or operator of the mine where the claimant was employed;

(iii) Factual findings by any governmental judicial body, state workers compensation board, or any governmental administrative body adjudicating the claimant's rights to any type of benefits;

(iv) Medical records containing a claimant's statements about employment recorded by the examining physician in the course of taking a history from or conducting a physical of the claimant. The history must have been taken, or physical conducted, during the course of the employment or within ten years thereafter.

§ 76.34 Proof of working level month exposure to radiation.

(a) A claimant's total radiation exposure, as measured in working level months (WLMs), will be calculated in the following manner:

(1) The average annual exposure level in any given mine during the time period claimant was employed in that mine, as measured in Working Levels (WLs), will be calculated by the methodology described in paragraph (c);

(2) The average annual exposure level for that mine will be multiplied by the time period, measured in months, that the claimant was employed in the mine, yielding an estimated average exposure level for the employment period;

(3) The estimated average exposure level for each mine in which the claimant was employed in one of the specified states during the designated time period will be added together to yield a total estimated average exposure level.

(b) An individual claiming under this Subpart *need not* submit any written documentation with the claim to establish the level of radiation to which the claimant was exposed during his/her employment in any uranium mine in one of the specified states during the designated time period. Based upon information provided in the claim application, the Radiation Exposure Compensation Unit will search records from the sources listed below for exposure level information on the mine or mines where the claimant was employed, or in surrounding

geographical areas. The information from these sources will be used to estimate the average annual radiation level in a mine during a particular time period using the methodology outlined in paragraph (c).

(1) Records of the AEC, or its successor agency, the DoE;

(2) Records of the PHS, including radiation level measurements taken in the course of health studies conducted of uranium miners during or including the period 1947–1971;

(3) Records of the United States Bureau of Mines, and regulatory agencies of the states of Arizona, Colorado, New Mexico, Utah and Wyoming;

(4) Records of companies engaged in uranium mining in any way or more of the designated states during the designated time period.

(c) The methodology that will be employed for estimating average annual radiation levels in a given uranium mine is that developed by the National Institute of Occupational Health and Safety (NIOSH) and National Institute of Environmental Health Sciences (NIEHS) in connection with the PHS study of United States uranium miners. A complete description of and discussion of the methodology can be found in the following two publications:

(1) F.E. Lundin, Jr., J.K. Wagoner & V.E. Archer, Radon Daughter Exposure and Respiratory Cancer: Quantitative and Temporal Aspects, Joint Monograph No. 1, NIOSH/NIESH (1971);

(2) A Recommended Standard for Occupational Exposure to Radon Progency in Underground Mining, Department of Health and Human Services, NIOSH, Pub. No. 88–101 (October 1987).

§ 76.35 Proof of lung cancer.

(a) Written medical documentation is required in all cases to prove that the claimant contracted primary lung cancer. In those cases described below in paragraphs (b) and (c), the claimant or eligible surviving beneficiary need not submit any medical documentation of disease at the time the claim is filed. In those cases described in paragraph (d), below, the claimant or eligible surviving beneficiary need only submit one or a very limited number of designated medical documents to prove the claimant contracted lung cancer. In all other cases, the claimant or eligible surviving beneficiary must submit medical documentation of the type prescribed in paragraph (e), below.

(b) Based upon information provided in the claim application, the Radiation Exposure Compensation Unit will search the records of the PHS or the NIOSH created or gathered during the course of any health studies conducted or being conducted by these agencies of uranium miners during or including the period 1947–1971, to determine if they contain proof of the claimant's medical condition. The Radiation Exposure Compensation Unit will accept as proof of medical condition, without more, the verification of the PHS or NIOSH that they possess medical records or abstracts of medical records of the claimant that contain a verified and verifiable diagnosis of lung cancer.

(1) If these agencies do not possess medical records or abstracts of medical records that contain a verified diagnosis of lung cancer, the Radiation Exposure Compensation Unit will notify the claimant or eligible surviving beneficiary, and attempt to determine which of the other means of proof of the claimant's medical condition, as described in paragraphs (c), (d), or (e), is appropriate.

(2) The absence of appropriate records in the PHS or NIOSH to prove the claimant had or has lung cancer will not be the basis for a denial of any claim.

(c) All individuals seeking compensation under this Subpart for claimants contracting lung cancer must submit with the claim a Release of Personal Information, valid in each of the specified states and California, authorizing the Radiation Exposure Compensation Unit to determine if proof of the claimant's medical condition is contained in any records in the custody, possession or control of the sources listed below. The Radiation Exposure Compensation Unit will accept as proof of the claimant's medical condition, without more, verification by the appropriate authorities in any source listed below that they possess medical records or abstracts of medical records of the claimant that contain a verified and verifiable diagnosis of lung cancer.

(1) The appropriate authorities in the State Departments of Health in the states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming;

(2) Records gathered or created in the course of any federally-supported health-related studies of uranium miners in any of the specified states;

(3) If either or both of the sources above do not possess medical records or abstracts of medical records of the claimant that contain verified diagnosis of lung cancer, the Radiation Exposure Compensation Unit will notify the claimant or eligible surviving beneficiary that they must submit the appropriate medical documentation, consistent with the requirements of paragraph (d) or (e), as appropriate;

(4) The absence of appropriate records in either or both of these sources that prove the claimant had or has lung cancer will not be the basis for a denial of any claim.

(d) Proof that the claimant contracted primary lung cancer may be made by the submission of ONE of the following contemporaneous medical records, provided that the specified document contains an explicit statement of diagnosis or such other information or data from which a physician with expertise in the diagnosis of pulmonary diseases or oncology can make a diagnosis to a reasonable degree of medical certainty. The documents listed are in order of priority: a claimant or eligible surviving beneficiary *must* submit the document first appearing on the list that exists. A claimant or eligible surviving beneficiary may submit a document of lower priority *only* if no document of higher priority is believed to exist or be readily available.

(1) Pathology report of tissue biopsy, including, but not limited to specimens obtained by any of the following methods:

(i) Surgical resection;

(ii) Endoscopic transbronchial biopsy;

(iii) Bronchial brushings;

(iv) Pleural fluid cytology;

(v) Fine needle aspirate;

(vi) Pleural biopsy;

(vii) Sputum cytology;

(2) Autopsy report;

(3) Bronchoscopy report;

(4) One of the following summary medical reports:

(i) Physician summary report;

(ii) Hospital discharge summary report;

(iii) Operative report;

(iv) Radiation therapy summary report;

(v) Oncology summary or consultation report;

(5) Reports or radiographic studies, including:

(i) X-rays of the chest;

(ii) Chest tomograms;

(iii) Computer-assisted tomography (CT);

(iv) Magnetic resonance imaging (MRI);

(6) Death certificate, provided that it is signed by the claimant's treating physician at the time of death.

(e) In the event that proof of the claimant's medical condition cannot be made by the means prescribed in paragraphs (b), (c), and (d), above, proof may be made by the submission of other medical records that contain, by themselves or in conjunction with other

written medical records, sufficient information or data from which the appropriate authorities at the National Cancer Institute or NIOSH can make a diagnosis to a reasonable degree of medical certainty. A statement of diagnosis in any medical record or document other than those listed in paragraph (d), above, that is not accompanied by sufficient information or data to support the diagnosis will not be accepted as proof of medical condition.

§ 76.36 Proof of non-malignant respiratory disease.

(a) Written medical documentation is required in all cases to prove that the claimant contracted a non-malignant respiratory disease. In those cases described below in paragraphs (b) and (c), the claimant or eligible surviving beneficiary need not submit any medical documentation of disease at the time the claim is filed. In those cases described below in paragraph (d), the claimant or eligible surviving beneficiary need only submit one or a very limited number of designated medical documents to prove the claimant contracted a non-malignant respiratory disease. In all other cases, the claimant or eligible surviving beneficiary must submit medical documentation of the type prescribed below in paragraph (e).

(b) Based upon information provided by the claimant in the claim application, the Radiation Exposure Compensation Unit will search the records of the PHS or the NIOSH in accordance with the procedures set forth in § 76.35(b) of this subpart.

(c) All individuals seeking compensation under this subpart for claimants contracting a non-malignant respiratory disease must submit with the claim a valid Release of Personal Information, authorizing the Radiation Exposure Compensation Unit to determine if proof of the claimant's medical condition is contained in any records gathered or created in the course of any federally-supported health-related studies of uranium miners in any of the specified states. The Radiation Exposure Compensation Unit will accept as proof of the claimant's medical condition, without more, verification by the appropriate authority responsible for the study that they possess medical records or abstracts of medical records of the claimant that contain a verified and verifiable diagnosis of a non-malignant respiratory disease.

(1) If the federally-supported health-related studies do not possess medical records or abstracts of medical records of the claimant that contain a verified diagnosis of a non-malignant respiratory disease, the Radiation Exposure Compensation Unit will notify the claimant or eligible surviving beneficiary that they must submit the appropriate medical documentation, consistent with the requirements of paragraph (d) or (e), as appropriate.

(2) The absence of appropriate records in any study that prove the claimant had or has a non-malignant respiratory disease will not be the basis for a denial of any claim.

(d) Proof that the claimant contracted a non-malignant respiratory disease may be made by the submission of ONE of the following contemporaneous medical records, provided that the specified document contains an explicit statement of diagnosis or such other information or data from which the appropriate authorities with the NIOSH can make a diagnosis to a reasonable degree of medical certainty. For purposes of this section, a statement of diagnosis in any of the records listed below of "restrictive lung disease" will be considered equivalent to a diagnosis of fibrosis. The document listed for each non-malignant respiratory disease are in order of priority: A claimant or eligible surviving beneficiary must submit the document first appearing on the list that exists. A claimant or eligible surviving beneficiary may submit a document of lower priority only if no document or higher priority is believed to exist or be readily available.

(1) *Pulmonary Fibrosis or Fibrosis of the Lung.*

(i) If the claimant is deceased at the time the claim is filed:

(A) Pathology report of tissue biopsy;

(B) Autopsy report;

(C) If X-rays are extant and available, either:

(*1*) An interpretative report of the x-ray(s) by a certified "B" reader classifying the existence of fibrosis of category 2/0 or greater according to the International Labour Organization Union Internationale Contra Cancer/Cincinnati (1971) International Classification of Radiographs of the Pneumoconioses (ILO–U/C 1971), or subsequent revisions; or,

(*2*) interpretive reports of the x-ray(s) by at least two (2) "B" readers classifying the existence of fibrosis of Category 1/0 or greater according to the ILO–U/C 1971, or subsequent revisions;

(D) An x-ray report;

(E) Physician summary report;

(F) Hospital discharge summary report;

(G) Hospital admitting report;

(H) Death certificate, provided that it is signed by the claimant's treating physician at the time of death.

(ii) If the claimant is alive at the time the claim is filed.

(A) An interpretative report of the x-ray(s) by a certified "B" reader classifying the existence of fibrosis of category 2/0 or greater according to the ILO–U/C 1971, or subsequent revisions; or,

(B) Interpretive reports of the x-ray(s) by at least two (2) "B" readers classifying the existence of fibrosis of Category 1/0 or greater according to the ILO–U/C 1971, or subsequent revisions.

(2) *Cor Pulmonale.*

(i) Report of a physical examination;

(ii) Report of roentgenogram of the chest (X-ray);

(iii) Electrocardiogram;

(iv) Physician summary report;

(v) Hospital discharge report;

(vi) Cardiology summary or consultation report;

(vii) Right heart catheterization report;

(viii) Autopsy report;

(ix) Death certificate, provided that it is signed by the claimant's treating physician at the time of death.

(3) *Moderate or Severe Silicosis.*

Proof of moderate or severe silicosis or pneumoconiosis must be made in accordance with the provision of paragraph (e), below.

(e) To establish eligibility for compensation for silicosis or pneumoconiosis, a claimant or eligible surviving beneficiary must establish that the disease is of at least a moderate or severe extent at the time the claim is filed, and that the claimant was employed in a uranium mine on an Indian Reservation in one of the specified states.

(1) To establish moderate or severe silicosis or pneumoconiosis, a claimant or surviving eligible beneficiary must submit the same documentation as is prescribed in paragraph (d)(1) for proof of pulmonary fibrosis, with the following exceptions:

(i) For purposes of this paragraph, any medical record prescribed in paragraph (d) must contain an explicit statement of diagnosis or such other information or data from which a physician with expertise in the diagnosis of pulmonary diseases can make a diagnosis of moderate or severe silicosis or pneumoconiosis;

(ii) In addition to the documentation required under paragraph (d)(1)(i)(C)(*2*) or (d)(1)(ii), the claimant or eligible surviving beneficiary must submit the results of a spirometry test or diffusing test revealing pulmonary impairment of at least 20 percent, as measured against a normal derived from a working population.

(2) Proof of employment in a uranium mine on an Indian Reservation must be made in accordance with the provisions of § 76.33. A claimant or eligible surviving beneficiary must establish that the claimant was employed in a uranium mine on an Indian reservation for a sufficient period of time to meet the exposure criteria set forth in § 76.32(c).

Subpart E—Eligibility Criteria for Claims by Onsite Participants

§ 76.40 Scope of subpart.

The regulations in this Subpart describe the criteria for eligibility for compensation under section 4(a)(2)(C) of the Act, and define the type and extent of evidence that will be accepted as proof of the prescribed criteria. Section 4(a)(2)(C) of the Act provides for compassionate payments as partial restitution to individuals who contracted one of a series of specified diseases, presumably as a result of exposure to fallout arising from his/her participation onsite in the atmospheric detonation of a nuclear device.

§ 76.41 Definitions.

(a) The definitions listed in § 76.11(b) through (f) are hereby incorporated by reference and are intended to apply to the same terms as used in this Subpart.

(b) *Onsite* means physical presence within the official boundaries of any of the following locations:

(1) The Nevada Test Site, Nevada;

(2) The Pacific Proving Grounds;

(3) The Alamogordo Bombing Range, New Mexico;

(4) Any designated test staging area;

(5) Any designated location within a Naval Shipyard, Air Force Base, or other official government installation where ships, aircraft or other equipment used in an atmospheric nuclear detonation were decontaminated.

(c) *Participant* means any employee of an appropriate government agency, employee of a contractor of an appropriate government agency, or civilian member of an official program within an appropriate government agency, who had official duties onsite directly related to the conduct of an atmospheric nuclear detonation by the United States.

(d) *Appropriate Government Agency* means the Department of Defense (DoD), or any of its components, services, agencies or offices, and specifically includes the Federal Civil Defense Administration and the Office of Civil and Defense Mobilization; and the Manhattan Engineering District, its successor agency, the Atomic Energy Commission (AEC), and its successor, the Department of Energy (DoE), and any of their components, agencies or offices.

(e) *Atmospheric Nuclear Test* means the intentional detonation of a nuclear device where the release of radioactivity to the atmosphere was anticipated and was a factor in test planning. A list of all atmospheric nuclear tests conducted by the United States at the Nevada Test Site or the Pacific Proving Grounds may be found in appendix A.

(f) *Period of Atmospheric Nuclear Testing* means the officially-designated operational period associated with each test operation listed below, plus an additional six (6) month period:

(1) For Operation Trinity, the period July 16, 1945 through August 6, 1945;

(2) For Operation Crossroads, the period July 1, 1946 through August 31, 1946;

(3) For Operation Sandstone, the period April 15, 1948 through May 20, 1948;

(4) For Operation Ranger, the period January 27, 1951 through February 6, 1951;

(5) For Operation Greenhouse, the period April 8, 1951 through June 20, 1951;

(6) For Operation Buster-Jangle, the period October 22, 1951 through December 20, 1951;

(7) For Operation Tumbler-Snapper, the period April 1, 1952, through June 20, 1952;

(8) For Operation Ivy, the period of November 1, 1952 through December 31, 1952;

(9) For Operation Upshot-Knothole, the period March 17, 1953 through June 20, 1953;

(10) For Operation Castle, the period March 1, 1954 through May 31, 1954;

(11) For Operation Teapot, the period February 18, 1955 through June 10, 1955;

(12) For Operation Wigwam, the period May 14, 1955 through May 15, 1955;

(13) For Operation Redwing, the period May 5, 1956 through August 6, 1956;

(14) For Operation Plumbbob, the period May 28, 1957 through October 22, 1957;

(15) For Operation Hardtack I, the period April 28, 1958 through October 31, 1958;

(16) For Operation Argus, the period August 27, 1958 through September 10, 1958;

(17) For Operation Hardtrack II, the period September 19, 1958 through October 31, 1958;

(18) For Operation Dominic I, the period April 25, 1962 through December 31, 1962;

(19) For Operation Dominic II/ Plowshare, the period July 6, 1962 through August 15, 1962.

(g) *Readily Available Documentation* means the same as the definition set forth in subpart D, § 76.31(r).

§ 76.42 Eligibility criteria.

To establish eligibility for compensation under this Subpart, a claimant or eligible surviving beneficiary must show, by a preponderance of the evidence, that each of the following criteria are satisfied:

(a) The claimant was present onsite during the time period of an atmospheric test of a nuclear device;

(b) The claimant was a participant in the test of a nuclear device;

(c) The claimant contracted one (or more) of the specified compensable diseases listed in subpart C, § 76.22(b).

§ 76.43 Proof of participation onsite during a period of atmospheric nuclear testing.

(a) Claimants from department of defense components.

(1) A claimant or eligible surviving beneficiary who alleges that the claimant was present onsite during the period of an atmospheric test as an employee of the DoD, or any of its components, services, agencies or offices, must submit the following information with the claim:

(i) Claimant's name.

(ii) Claimant's military serial number (if known);

(iii) Claimant's social security number;

(iv) The name or number of the claimant's military organization or unit assignment at the time of their participation onsite;

(v) The dates of the claimant's assignment onsite;

(vi) As full and complete a description as possible of the claimant's official duties, responsibilities and activities while an onsite participant.

(2) A claimant or eligible surviving beneficiary under this section need not submit any additional documentation of presence onsite during an atmospheric nuclear test at the time the claim is filed. A claimant or eligible surviving beneficiary who has readily available documentation that tends to prove the claimant was an onsite participant is encouraged to submit this documentation to the Radiation Exposure Compensation Unit with the claim.

(3) Upon receipt of a claim under this Subpart that contains the information set forth in paragraph (a)(1), the Radiation Exposure Compensation Unit

will forward the information to the Defense Nuclear Agency (DNA) of the DoD. The DNA will conduct a reasonable search of records within their custody or control that are material to the question of the claimant's physical presence onsite and participation in an atmospheric nuclear test.

(i) The Radiation Exposure Compensation Unit shall, in all cases, have the right to finally determine whether the claimant meets the criteria for compensation under this Subpart.

(ii) Official verification by the DNA that official government records exist that prove the claimant satisfies any or all the criteria for compensation as an onsite participant will be accepted by the Radiation Exposure Compensation Unit as proof of eligibility under this Subpart.

(iii) The failure of the DNA to verify that the claimant meets any or all of the prescribed criteria for compensation as an onsite participant will not be considered a denial of the claim. The Radiation Exposure Compensation Unit will inform the claimant or eligible surviving beneficiary what probative information has been located by the DNA, and what additional proof is required to establish eligibility.

(b) Claimants from AEC and DoE components or contractors.

(1) A claimant or eligible surviving beneficiary who alleges that the claimant was present onsite during an atmospheric nuclear test as an employee of the Manhattan Engineering District, AEC, the DoE, or any of their components, agencies or offices, or as an employee of a contractor of the AEC, or DoE, must submit the following information at the time the claim is filed:

(i) Claimant's name;

(ii) Claimant's social security number;

(iii) The name or other identifying information associated with the claimant's organization, unit, assignment or employer at the time of their participation onsite;

(iv) The dates of the claimant's assignment onsite;

(v) As full and complete a description as possible of the claimant's official duties, responsibilities and activities while an onsite participant.

(2) A claimant or eligible surviving beneficiary under this section need not submit any additional documentation of presence onsite during an atmospheric nuclear test at the time the claim is filed. A claimant or eligible surviving beneficiary who has readily available documentation that tends to prove the claimant was an onsite participant is encouraged to submit this documentation to the Radiation Exposure Compensation Unit with the claim.

(3) Upon receipt of a claim under this Subpart that contains the information set forth in paragraph (b)(1), the Radiation Exposure Compensation Unit will forward the information to the Department of Energy's Nevada Operations Office (DOE/NvO). DoE/NvO will conduct a reasonable search of records within their custody or control that are material to the question of the claimant's physical presence onsite and participation in an atmospheric nuclear test. The regulations set forth in § 76.43(a)(3)(i)–(iii) of this Subpart will apply as well to this paragraph.

(c) Presumption of participation.

A claimant will be presumed to have had official duties related to the conduct of an atmospheric nuclear test if it is documented that during the period of an atmospheric nuclear test:

(1) The individual was located in any area onsite defined as an exclusion zone by the appropriate authorities, as a result of official assignment;

((2) The individual was located onsite and involved in the decontamination of any equipment or materiel used during the atmospheric nuclear test;

(3) The individual was assigned to official military duties in connection with ships, aircraft or other equipment used in direct support of an atmospheric nuclear test;

(4) The individual was assigned to and served as a member of the garrison or maintenance forces on the atoll of Eniwetok during any of the following periods;

(i) June 21 through July 1, 1952;

(ii) August 7, 1956 through August 7, 1957; or

(iii) November 1, 1958 through April 30, 1959.

(5) The individual was assigned to any area onsite that was determined by the appropriate authorities to have been subject to fallout from an atmospheric nuclear test.

§ 76.44 Proof of medical condition.

Proof of medical condition under this subpart will be made in the same manner, and according to the same procedures and limitations, as are set forward in the provisions of subpart C, § 76.26.

Subpart F—Procedures

§ 76.50 Attorney general's delegation of authority.

(a) An Assistant Director within the Constitutional and Specialized Tort Staff, Torts Branch, Civil Division, shall be assigned to manage the Radiation Exposure Compensation Program and issue a Decision on each claim filed under the Act, and otherwise act on behalf of the Attorney General in all other matters relating to the administration of the Program.

(b) The Assistant Attorney General, Civil Division, or the official designated by him to act on his behalf (the Appeals Officer), shall act on appeals from the Assistant Director's Decisions.

§ 76.51 Filing of claims.

(a) All claims for compensation under the Act must be in writing and submitted on a standard form designated by the Assistant Director for the filing of compensation claims. Except as specifically provided in these regulations, the claimant or eligible surviving beneficiary must furnish the written medical documentation required by these regulations with his/her standard form. Except as specifically provided in these regulations, the claimant or eligible surviving beneficiary must also provide with the standard form reliable records establishing his/her exposure to radiation in accordance with these regulations. The standard form must be completed, signed under oath by a person eligible to file a claim under the Act, and mailed with supporting documentation to the following address: Assistant Director, Radiation Exposure Compensation Program, U.S. Department of Justice, P.O. Box 146, Ben Franklin Station, Washington, DC 20044–0146.

Copies of the standard form, as well as the regulations, guidelines and other information may be obtained by requesting the document or publications from the Assistant Director at the address indicated above.

(b) A claim shall be deemed to have been filed on the date the standard form and supporting documentation is actually received in the office of the Assistant Director. The date of receipt shall be recorded by a stamp on the face of the standard form. The Assistant Director shall promptly acknowledge receipt of the claim with a postcard identifying the number assigned to the claim, the date the claim was received, and the date by which the Assistant Director must act on the claim.

(c) The following persons are eligible to file claims for compensation under the Act:

(1) A person claiming an injury specified in the Act, or if such person is deceased, one or more of the following persons in the order set forth below:

(2) The wife or nusband of the decedent, provided such husband or

wife was married to the decedent for at least one year immediately before the date of the decedent's death;

(3) If there is no surviving spouse, a natural, adopted, or step child of the decedent, provided such step child lived with the decedent in a regular parent-child relationship;

(4) If there is no surviving spouse or child, a parent of the decedent;

(5) If there is no surviving spouse, child or parent, a grandchild of the decedent; or

(6) if there is no surviving spouse, child, parent or grandchild, a grandparent of the decedent.

(d) A spouse of a deceased eligible person must establish his/her eligibility to file a claim by furnishing the death certificate of the deceased eligible person and one of the following:

(1) The public record of marriage;

(2) If a member of an Indian tribe, a signed release of private information which will be used to obtain a statement of verification of the marriage as reflected in the tribal records obtained directly by the Assistant Director from the tribal records custodian;

(3) The religious record of marriage;

(4) A judicial or other governmental determination that a valid marriage existed, such as the final opinion or order of a probate court or a determination of the Social Security Administration that the claimant is the spouse of the decedent; or

(5) The original certificate of marriage.

(e) A child of a deceased eligible person must establish his/her eligibility to file a claim by furnishing the death certificate of the deceased eligible person, a death certificate or divorce decree of the spouse of the deceased eligible person, an affidavit stating either that the deceased eligible person had no other children or setting forth the names of all natural, adopted and step children of the deceased eligible person together with the dates and places of death of each child or the current address of each child, and one of the following:

(1) A birth certificate showing that the deceased eligible person was the child's parent;

(2) If a member of an Indian tribe, a signed release of private information which will be used to obtain a statement of verification of the child-parent relationship as reflected in the tribal records obtained directly by the Assistant Director from the tribal records custodian;

(3) A judicial decree identifying the deceased person as the child's parent and ordering the deceased eligible person to contribute to the child's support;

(4) The judicial decree of adoption;

(5) In the case of a step child, evidence of birth to the spouse of the deceased eligible person as outlined above, and records which reflect that the step child lived with the deceased eligible person in a regular parent-child relationship.

(f) A parent of a deceased eligible person must establish his/her eligibility to file a claim by furnishing the death certificate of the deceased eligible person, a death certificate or divorce decree of the spouse of the deceased eligible person, the death certificate of each natural, adopted or stepchild of the deceased eligible person, the death certificate or current name and address of the other natural or adoptive parents of the deceased eligible person, an affidavit stating that the deceased eligible person has no living spouse, no living natural, adopted or stepchildren, and no other living natural or adoptive parents (or setting forth the names of all natural or adoptive parents of the deceased eligible person together with the dates and places of death of each other parent or the current address of each other parent), and one of the first four types of records noted in the preceding paragraph.

(g) A grandchild of a deceased eligible person must establish his/her eligibility to file a claim by furnishing the death certificate of the deceased eligible person, a death certificate or divorce decree of the spouse of the deceased eligible person, the death certificate of each natural, adopted or stepchild of the deceased eligible person, the death certificate of each natural or adoptive parent of the deceased eligible person, the death certificate of each natural or adopted grandchild of the deceased eligible person, an affidavit stating either that the deceased eligible person has no living spouse, no living natural or adopted children, and no other living natural or adopted grandchildren (or setting forth the names of all natural or adopted grandchildren of the deceased eligible person together with the dates and places of death of each grandchild or the current address of each grandchild), and one of the following:

(1) Birth certificates showing that the deceased eligible person was the grandparent of the claimant;

(2) If a member of an Indian tribe, a signed release of private information which will be used to obtain a statement of verification of the grandparent-grandchild relationship as reflected in the tribal records obtained directly by the Assistant Director from the tribal records custodian; or

(3) A combination of judicial records and birth certificates showing that the deceased eligible person was the natural or adoptive grandparent of the claimant.

(h) A grandparent of a deceased eligible person must establish his/her eligibility to file a claim by furnishing the death certificate of the deceased eligible person, a death certificate or divorce decree of the spouse of the deceased eligible person, the death certificate of each natural, adoptive, or stepchild, natural or adoptive parent and grandchild of the deceased eligible person, an affidavit stating that the deceased eligible person had no spouse, no natural, adopted or stepchildren or natural or adopted grandchildren, and no other living natural or adoptive grandparents (or setting forth the names of all natural or adoptive grandparents of the deceased eligible person together with the dates and places of death of each other grandparent or the current address of each other grandparent), and one of the three types of records noted in the preceding paragraph.

(i) A claim that was filed and denied may be filed again in those cases where the claimant obtains written medical documentation establishing an injury specified in the Act, or documentation establishing his exposure to radiation through residency, onsite participation, or uranium mining, that was not available to the claimant or eligible surviving beneficiary when he/she initially filed a claim for compensation. However, a claimant or eligible surviving beneficiary may not file a claim more than three times.

§ 76.52 Review and resolution of claims.

(a) The Assistant Director shall issue a written Decision on each claim within twelve months from the date the claim was received.

(b) In reviewing each claim, the Assistant Director shall examine the medical documentation submitted in support of the claim and determine whether it meets the requirements established by the Act and the regulations. If the Assistant Director determines that the documentation does not meet the requirements of the Act and the regulations, he shall so advise the claimant (or eligible surviving beneficiary) in writing setting forth the reasons for his determination and provide the claimant (or eligible surviving beneficiary) thirty days, or such greater period as he permits, to furnish additional medical documentation which meets the requirements of the Act and the regulations. If the claimant or eligible surviving beneficiary fails to provide the necessary documentation within thirty days, or the greater period approved by

the Assistant Director, then the Assistant Director shall issue a Decision denying the claim without further review.

(c) If the written medical documentation meets the requirements of the Act and the regulations, the Assistant Director shall also examine the records filed in support of the claim to establish exposure and determine whether such records meet the requirements established by the statute and the regulations. If the Assistant Director determines that the records do not meet the requirements of the Act and the regulations, he shall so advise the claimant or eligible surviving beneficiary in writing setting forth the reasons for his determination and provide the claimant or eligible surviving beneficiary thirty days, or such greater period as he permits, to furnish additional records which meet the requirements of the Act and the regulations. If the claimant or eligible surviving beneficiary fails to provide the necessary records within thirty days, or the greater period approved by the Assistant Director, then the Assistant Director shall issue a Decision denying the claim without further review.

(d) When the Assistant Director determines that the medical documentation and exposure documentation submitted by the claimant (or eligible surviving beneficiary) meets the requirements of the Act and these regulations, then the Assistant Director shall issue a Decision entitling the claimant (or eligible surviving beneficiary) to compensation. Any Decision denying a claim shall also indicate that the Decision of the Assistant Director may be appealed in writing within thirty days from the date of the Decision, or such greater period as may be permitted by the Assistant Director, and identify the address to which the written appeal should be sent.

§ 76.53 Appeal procedures.

(a) An appeal must be in writing and submitted within thirty days of the date of the Decision, or such greater period as may be approved by the Assistant Director, from the date of the Decision to the following address: Appeals Officer, Radiation Exposure Compensation Program, U.S. Department of Justice, P.O. Box 146, Ben Franklin Station, Washington, DC 20044–0146.

(b) The claimant or eligible surviving beneficiary may not submit new documentation or records to the Appeals Officer that were not provided to the Assistant Director before he or she issued his Decision.

(c) If the appeal is not submitted within the thirty day period, or the greater period allowed by the Assistant Director, the Appeals Officer shall deny the appeal. If the appeal is submitted within the required period, the Assistant Director shall forward the appeal, the claim, the Decision, and all other associated papers to the Appeals Officer for action.

(d) The Appeals Officer shall review the appeal and information provided by the Assistant Director. After such review, the Appeals Officer shall issue a Memorandum which shall either affirm or reverse the Assistant Director's Decision, or remand the claim to the Assistant Director for further action, and shall include a statement of the reasons for such reversal, affirmance, or remand. The Memorandum and all papers relating to the claim shall be returned to the Assistant Director who shall promptly inform the claimant or eligible surviving beneficiary of the action of the Appeals Officer.

§ 76.54 Attorneys.

(a) A claimant (or eligible surviving beneficiary) need not be represented by an attorney to file a claim under the Act or receive payment under the Program. To the extent permitted by the resources available to administer the Program, the Assistant Director shall provide assistance to all persons who file claims for compensation under the Act. Claimants and surviving eligible beneficiaries are encouraged to seek assistance from the Assistant Director when filing a claim.

(b) If the claimant (or eligible surviving beneficiary) desires to be represented, then an attorney shall file with the Assistant Director a written declaration that he/she is currently qualified as provided by the Agency Practice Act, 5 U.S.C. section 500, and is authorized to represent the particular person in whose behalf he/she acts.

(c) The total compensation payable to the attorney may not exceed ten percent of the payment to the claimant or the eligible surviving beneficiary.

§ 76.55 Procedures for payment of claims.

(a) After a claim which involves a deceased claimant is approved by the Assistant Director the Assistant Director shall take all necessary and appropriate steps to verify the existence of all living survivors who are entitled by the Act to receive the payment the deceased eligible person would have received. The Assistant Director may conduct any investigation, require any eligible surviving beneficiary to provide or execute any affidavit, record, or document, or authorize the release of any information as the Assistant Director deems necessary to ensure that the compensation payment is made to the correct person(s). If the eligible surviving beneficiary fails or refuses to execute an affidavit or release of information, or provide a record or document requested, or fails to provide access to information, such failure or refusal may be deemed to be a rejection of the payment, unless no eligible surviving beneficiary of the claimant has nor can obtain the legal authority to provide, release, or authorize access to the required information, records, or documents.

(b) When the Assistant Director has identified the individual(s) who are entitled to the compensation payment, he shall notify such person(s) and require the person(s) to sign an Acceptance of Payment Form. Such signed form shall be signed and returned within thirty days or such greater period as may be allowed by the Assistant Director. Failure to return the signed form within the required time period may be deemed to be a rejection of the payment. Signing and returning the form within the required period shall be deemed to be acceptance of the payment, unless the individual who has signed the form dies prior to receiving the payment, in which case the person who possesses the payment shall return it to the Assistant Director for redetermination of the correct disbursement of the payment.

(c) Prior to authorizing payment, the Assistant Director shall require the claimant or eligible surviving beneficiary to execute and provide an affidavit acknowledging that no prior awards or settlements have been received and that no payment has been made by the federal government on account of illness for which the claim was submitted. If any such award, settlement, or payment was made, the Assistant Director shall calculate the actuarial present value of the award, settlement or payment and subtract that calculated amount from the payment to be made under the Act.

(d) Upon receipt of the Acceptance of Payment Form, the Assistant Director and the Director or Deputy Director of the Constitutional and Specialized Tort Staff, Torts Branch, Civil Division, shall give authorization to the Secretary of the Treasury for payments out of the funds appropriated for this purpose.

Appendix to Part 76—Regulations Implementing the Radiation Exposure Compensation Act

ANNOUNCED UNITED STATES NUCLEAR TESTS—BY DATE

Event name	Date (GCT)	Location
Trinity	07/16/45	Alamogordo.
First test of a nuclear weapon		
World War II	08/05/45	Japan.
First combat use—Hiroshima		
World War II	08/09/45	Japan.
Second combat use—Nagasaki		
Operation Crossroads:		
Able	06/30/46	Bikini.
Baker	07/24/46	Bikini.
Operation Sandstone:		
X-ray	04/14/48	Enewetak.
Yoke	04/30/48	Enewetak.
Zebra	05/14/48	Enewetak.
Operation Ranger:		
Able	01/27/51	NTS.
Baker	01/28/51	NTS.
Easy	02/01/51	NTS.
Baker-2	02/02/51	NTS.
Fox	02/06/51	NTS.
Operation Greenhouse:		
Dog	04/07/51	Enewetak.
Easy	04/20/51	Enewetak.
George	05/08/51	Enewetak.
Item	05/24/51	Enewetak.
First test of the boosting principle		
Operation Buster:		
Able	10/22/51	NTS.
Radioactivity not detected off site		
Baker	10/28/51	NTS.
Charlie	10/20/51	NTS.
Dog	11/01/51	NTS.
Easy	11/05/51	NTS.
Operation Jangle:		
Sugar	11/19/51	NTS.
Uncle	11/29/51	NTS.
Operation tumbler-Snapper:		
Able	04/01/52	NTS.
Baker	04/15/52	NTS.
Charlie	04/22/52	NTS.
Dog	05/01/52	NTS.
Easy	05/07/52	NTS.
Fox	05/25/52	NTS.
George	06/01/52	NTS.
How	06/05/52	NTS.
Operation Ivy:		
Mike	10/31/52	Enewetak.
Experimental thermonuclear device		
King	11/15/52	Enewetak.
Operation Upshot-Knothole:		
Annie	03/17/53	NTS.
Nancy	03/24/53	NTS.
Ruth	03/31/53	NTS.
Dixie	04/06/53	NTS.
Ray	04/11/53	NTS.
Badger	04/18/53	NTS.
Simon	04/25/53	NTS.
Encore	05/08/53	NTS.
Harry	05/19/53	NTS.
Grable	05/25/53	NTS.
Fired fro n 280mm gun		
Climax	06/04/53	NTS.
Operation Castle:		
Bravo	02/28/54	Bikini.

ANNOUNCED UNITED STATES NUCLEAR TESTS—BY DATE—Continued

Event name	Date (GCT)	Location
Experimental thermonuclear device		
Romeo	03/26/54	Bikini.
Koon	04/06/54	Bikini.
Union	04/25/54	Bikini.
Yankee	05/04/54	Bikini.
Nectar	05/13/54	Enewetak.
Operation Teapot:		
Wasp	02/18/55	NTS.
Moth	02/22/55	NTS.
Tesla	03/01/55	NTS.
Turk	03/07/55	NTS.
Hornet	03/12/55	NTS.
Bee	03/22/55	NTS.
Ess	03/23/55	NTS.
Apple-1	03/29/55	NTS.
Wasp Prime	03/29/55	NTS.
Ha	04/06/55	NTS.
Post	04/09/55	NTS.
Met	04/15/55	NTS.
Apple-2	05/15/55	NTS.
Zucchini	05/15/55	NTS.
Operation Wigwam:		
Wigwam	05/14/55	Pacific.
North 29 degrees, West 126 degrees		
Project 56:		
Project 56 #1	11/01/55	NTS.
Project 56 #2	11/03/55	NTS.
Pu dispersal		
Project 56 #3	11/05/55	NTS.
Pu dispersal		
Project 56 #4	01/18/56	NTS.
Pu dispersal		
Operation Redwing:		
Lacrosse	05/04/56	Enewetak.
Cherokee	05/20/56	Bikini.
First airdrop by U.S. of a thermonuclear weapon		
Zuni	05/27/56	Bikini.
Yuma	05/27/56	Enewetak.
Erie	05/30/56	Enewetak.
Seminole	06/06/56	Enewetak.
Flathead	06/11/56	Bikini.
Blackfoot	06/11/56	Enewetak.
Kickapoo	06/13/56	Enewetak.
Osage	06/16/56	Enewetak.
Inca	06/21/56	Enewetak.
Dakota	06/25/56	Bikini.
Mohawk	07/02/56	Enewetak.
Apache	07/08/56	Enewetak.
Navajo	07/10/56	Bikini.
Tewa	07/20/56	Bikini.
Huron	07/21/56	Enewetak.
Project 57:		
Project 57 #1	04/24/57	Bombing range.
Pu dispersal		
Operation Plumbbob:		
Boltzmann	05/28/57	NTS.
Franklin	06/02/57	NTS.
Lassen	06/05/57	NTS.
Radioactivity not detected off site		
Wilson	06/18/57	NTS.
Priscilla	06/24/57	NTS.
Coulomb-A	07/01/57	NTS.
Radioactivity not detected off site		
Hood	07/05/57	NTS.
Diablo	07/15/57	NTS.
John	07/19/57	NTS.

ANNOUNCED UNITED STATES NUCLEAR TESTS—BY DATE—Continued

Event name	Date (GCT)	Location
Air-to-air missile		
Kepler	07/24/57	NTS.
Owens	07/25/57	NTS.
Stokes	08/07/57	NTS.
Shasta	08/18/57	NTS.
Doppler	08/23/57	NTS.
Franklin Prime	08/30/57	NTS.
Smoky	08/31/57	NTS.
Galileo	09/02/57	NTS.
Wheeler	09/06/57	NTS.
Coulomb-B	09/06/57	NTS.
Laplace	09/08/57	NTS.
Fizeau	09/14/57	NTS.
Newton	09/16/57	NTS.
Whitney	09/23/57	NTS.
Charleston	09/28/57	NTS.
Morgan	10/07/57	NTS.
Project 58:		
Coulomb-C	12/09/57	NTS.
Operation Hardtack I:		
Three DOD high-altitude tests in the Pacific during Hardtack I were conducted as Operation Newsreel.		
Yucca	04/28/58	Pacific.
North 12 degrees 37 min., East 163 degrees 01 min. DOD Event—Operation Newsreel		
Cactus	05/05/58	Enewetak.
Fir	05/11/58	Bikini.
Butternut	05/11/58	Enewetak.
Koa	05/12/58	Enewetak.
Wahoo	05/16/58	Enewetak.
Holly	05/20/58	Enewetak.
Nutmeg	05/21/58	Bikini.
Yellowwood	05/26/58	Enewetak.
Magnolia	05/26/58	Enewetak.
Tobacco	05/30/58	Enewetak.
Sycamore	05/31/58	Bikini.
Rose	06/02/58	Enewetak.
Umbrella	06/08/58	Enewetak.
Maple	06/10/58	Bikini.
Aspen	06/14/58	Bikini.
Walnut	06/14/58	Enewetak.
Linden	06/18/58	Enewetak.
Redwood	06/27/58	Bikini.
Elder	06/27/58	Enewetak.
Oak	06/28/58	Enewetak.
Hickory	06/29/58	Bikini.
Sequoia	07/01/58	Enewetak.
Cedar	07/02/58	Bikini.
Dogwood	07/05/58	Enewetak.
Popular	07/12/58	Bikini.
Scaevola	07/14/58	Enewetak.
Pisonia	07/17/58	Enewetak.
Juniper	07/22/58	Bikini.
Olive	07/22/58	Enewetak.
Pine	07/26/58	Enewetak.
Teak	08/01/58	Johnston Isl. area.
DOD Event—Operational Newsreel		
Quince	08/06/58	Enewetak.
Orange	08/12/58	Johnston Isl. area.
DOD Event—Operation Newsreel		
Fig	08/18/58	Enewetak.
Operation Argus:		
Argus I	08/27/58	South Atlantic.
About 300 miles altitude, South 38.5 deg., West 11.5 deg.		
Argus II	08/30/58	South Atlantic.

ANNOUNCED UNITED STATES NUCLEAR TESTS—BY DATE—Continued

Event name	Date (GCT)	Location
About 300 miles altitude, South 49.5 deg., West 8.2 deg.		
Argus III	09/06/58	South Atlantic.
About 300 miles altitude, South 48.5 deg., West 9.7 deg.		
Operation Hardtack II:		
Eddy	09/19/58	NTS.
Mora	09/29/58	NTS.
Hidalgo	10/05/58	NTS.
Quay	10/10/58	NTS.
Lea	10/13/58	NTS.
Hamilton	10/15/58	NTS.
Dona Ana	10/16/58	NTS.
Vesta	10/17/58	NTS.
Fired in surface structure		
Rio Arriba	10/18/58	NTS.
Socorro	10/22/58	NTS.
Wrangell	10/22/58	NTS.
Rushmore	10/22/58	NTS.
Oberon	10/22/58	NTS.
No radioactive release detected		
Catron	10/24/58	NTS.
Juno	10/24/58	NTS.
Fired in surface structure		
Radioactivity not detected off site		
Ceres	10/26/58	NTS.
Radioactivity not detected off site		
Sanford	10/26/58	NTS.
De Baca	10/26/58	NTS.
Chavez	10/27/58	NTS.
Humboldt	10/29/58	NTS.
Maxama	10/29/58	NTS.
No radioactivity release detected		
Sante Fe	10/30/58	NTS.
Ganymede	10/30/58	NTS.
Contained in surface structure		
No radioactive release detected		
Titania	10/30/58	NTS.
Operation Nougat:		
Danny Boy	03/06/62	NTS.
DOD Event		
Crater diameter 265 ft., depth 84 ft. in basalt		
Release of radioactivity detected off site		
1962 tests in Christmas and Johnston Island areas; and elsewhere in the Pacific, were part of Operation Dominic. Intermediate yield for these tests means 20–1000 kt.		
Adobe	04/25/62	Christmas Isl. area.
Operation Dominic		
Aztec	04/27/62	Christmas Isl. area.
Operation Dominic		
Arkansas	04/27/62	Christmas Isl. area.
Operation Dominic		
Questa	05/04/62	Christmas Isl. area.
Operation Dominic		
Frigate Bird	05/06/62	Pacific.
Operation Dominic		
North 4 degrees 50 min., West 149 degrees 25 min.		
Warhead in missile launched from Polaris submarine		
Yukon	05/08/62	Christmas Isl. area.

ANNOUNCED UNITED STATES NUCLEAR TESTS—BY DATE—Continued

Event name	Date (GCT)	Location
Operation Dominic		
Mesilla	05/09/62	Christmas Isl. area.
Operation Dominic		
Muskegon	05/11/62	Christmas Isl. area.
Operation Dominic		
Swordfish	05/11/62	Pacific.
Operation Dominic		
North 31 degrees 14 min., West 124 degrees 13 min.		
Antisubmarine rocket (ASROC) system proof test		
Encino	05/12/62	Christmas Isl. area.
Operation Dominic		
Swanee	05/14/62	Christmas Isl. area.
Operation Dominic		
Chetco	05/19/62	Christmas Isl. area.
Operation Dominic		
Tanana	05/25/62	Christmas Isl. area.
Operation Dominic		
Nambe	05/27/62	Christmas Isl. area.
Operation Dominic		
Alma	06/08/62	Christmas Isl. area.
Operation Dominic		
Truckee	06/09/62	Christmas Isl. area.
Operation Dominic		
Yeso	06/10/62	Christmas Isl. area.
Operation Dominic		
Harlem	06/12/62	Christmas Isl. area.
Operation Dominic		
Rinconada	06/15/62	Christmas Isl. area.
Operation Dominic		
Dulce	06/17/62	Christmas Isl. area.
Operation Dominic		
Petit	06/19/62	Christmas Isl. area.
Operation Dominic		
Otowi	06/22/62	Christmas Isl. area.
Operation Dominic		
Bighorn	06/27/62	Christmas Isl. area.
Operation Dominic		
Bluestone	06/30/62	Christmas Isl. area.
Operation Dominic		
Operation Storax:		
Sedan	07/07/62	NTS.
Excavation experiment		
Crater 1280 ft. diam., 320 ft. deep		
Thermonuclear device		
Release of radioactivity detected off site		
Four DOD weapons effects tests at NTS in July of 1962 were conducted as Operation Sunbeam		
Little Feller II	07/07/62	NTS.
Slightly above ground		
DOD Event—Operation Sunbeam		
Radioactivity not detected off site		
Five DOD high-altitude weapons effects tests were conducted during Operation Dominic as Operation Fishbowl		
Starfish Prime	07/09/62	Johnston Isl. area.

ANNOUNCED UNITED STATES NUCLEAR TESTS—BY DATE—Continued

Event name	Date (GCT)	Location
DOD Event—Operation Fishbowl		
High altitude—400 kilometers		
Sunset	07/10/62	Christmas Isl. area.
Operation Dominic		
Pamlico	07/11/62	Christmas Isl. area.
Operation Dominic		
Johnie Boy	07/11/62	Christmas Isl. area.
Slightly below ground		
DOD Event—Operation Sunbeam		
Release of radioactivity detected off site		
Small Boy	07/14/62	NTS.
Slightly above ground		
DOD Event—Operation Sunbeam		
Release of radioactivity detected off site		
Little Feller I	07/17/62	NTS.
Slightly above ground		
DOD Event—Operation Sunbeam		
Release of radioactivity detected off site		
Androscoggin	10/02/62	Johnston Isl. area.
Operation Dominic		
Bumping	10/06/62	Johnston Isl. area.
Operation Dominic		
Chama	10/18/62	Johnston Isl. area.
Operation Dominic		
Checkmate	10/20/62	Johnston Isl. area.
DOD Event—Operation Fishbowl		
High Altitude—tens of kilometers		
Bluegill 3 Prime	10/26/62	Johnston Isl. area.
DOD Event—Operation Fishbowl		
High Altitude—tens of kilometers		
Calamity	10/27/62	NTS.
Operation Dominic		
Housatonic	10/30/62	Johnston Isl. area.
Operation Dominic		
Kingfish	11/01/62	Johnston Isl. area.
DOD Event—Operation Fishbowl		
High Altitude—tens of kilometers		
Tightrope	11/04/62	Johnston Isl. area.
DOD Event—Operation Fishbowl		
High Altitude—tens of kilometers		
Four storage and transportation tests on the bombing range during May and June 1963 were conducted as the joint US–UK Operation Roller Coaster		
Double Tracks	05/15/63	Bombing range.
Operation Roller Coaster		
Pu dispersal		
Radioactivity detected off site		
Clean Slate I	05/25/63	Bombing range.

ANNOUNCED UNITED STATES NUCLEAR TESTS—BY DATE—Continued

Event name	Date (GCT)	Location
Operation Roller Coaster Pu dispersal Radioactivity detected off site		
Clean Slate II	05/31/63	Bombing range.
Operation Roller Coaster Pu dispersal Radioactivity detected off site		
Clean Slate III	06/09/63	Bombing range.
Operation Roller Coaster Pu dispersal Radioactivity detected off site		
Operation Whetstone:		
Palanquin	04/14/65	NTS.
Release of radioactivity detected off site		
Operation Crosstie:		
Cabriolet	01/26/68	NTS.
Release of radioactivity detected off site		
Buggy	03/12/68	NTS.
Row charge experiment—five simultaneous detonations		
Release of radioactivity detected off site		
Operation Bowline:		
Schooner	12/08/68	NTS.
Release of radioactivity detected off site		

Dated: August 23, 1991.

William P. Barr,

Acting Attorney General.

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BILLING CODE 4410-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BPD-655-P]

RIN 0938-AE54

Medicare Program; Revision of the Medicare Economic Index

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: Beginning January 1, 1992, Medicare payments for physicians' services under part B will be made based on a fee schedule. Annual updates of the conversion factor used in the fee schedule will be based in part on the Medicare Economic Index (MEI). Before January 1, 1992, Medicare payments for physicians' services under part B are limited by capping prevailing charges using the MEI, which has not undergone a major methodological revision since its adoption in 1975. This proposed rule would revise the method used to calculate the MEI in order to more accurately reflect year-to-year economic changes affecting the cost of providing physicians' services, thus ensuring that Medicare payments for those services do not increase more than is justified.

DATES: To assure consideration, comments must be received at the appropriate address, as provided below, no later than 5 p.m. on November 8, 1991.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, attention: BPD-655-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to file code BPD-655-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Stanley Weintraub, (301) 966-4498.

SUPPLEMENTARY INFORMATION:

I. Background

Before January 1, 1992, payment under Medicare Part B for physicians' services is based on a reasonable charge that, under section 1842(b) of the Social Security Act (the Act), may not exceed the lowest of the—

- Physician's actual charge for the service;
- Physician's customary charge for the service; or
- Prevailing charges of physicians for similar services in the locality.

Section 1842(b)(3) of the Act and regulations at 42 CFR 405.504(a)(3)(i) require that the local prevailing charge for a physician's service not exceed the level in effect for that service in the locality determined for the fiscal year ending on June 30, 1973, except to the extent justified on the basis of appropriate indicators of economic change.

Since 1975 we have made the adjustment for economic change provided in the law by means of a measure called the Medicare Economic Index (MEI). The MEI ties increases in Medicare prevailing charges subsequent to 1973 to increases in physicians' practice costs and general wage rates throughout the economy, relative to the base year, which is 1971. The MEI was first published in the **Federal Register** on June 16, 1975 (40 FR 25446), became effective for services furnished on or after July 1, 1975, and has been calculated annually.

Congress mandated the MEI as part of the 1972 Amendments to the Social Security Act (Pub. L. 92-603). Although Public Law 92-603 did not specify the particular type of index to be used, the present form of the MEI follows the recommendations outlined by the Senate Finance Committee in its report accompanying the legislation, in that it attempts to present an equitable measure for changes in the costs of physicians' time and the operating expenses of physicians (S. Rep. No. 1230, 92nd Cong., 2d Sess. 190-192 (1972)).

Section 6102 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) amended the Act by adding a new section 1848, which sets forth provisions governing Medicare payment for physicians' services provided on or after January 1, 1992. Section 1848—

- Replaced the reasonable charge payment mechanism with a new fee schedule for physicians' services;
- Prescribed a process for establishing volume performance standard rates of increase for physicians' services expenditures; and
- Replaced the "maximum allowable actual charge" (which limits the total amounts that nonparticipating physicians may charge Medicare beneficiaries for covered services) with a new "limiting charge."

A separate proposed rule is being developed to describe the new Medicare fee schedule and other related issues.

The Medicare fee schedule will be comprised of three basic elements—the

relative value unit for each service, a geographic adjustment factor, and a national conversion factor. Beginning with calendar year 1991, section 1848(d)(2) of the Act requires the Secretary to recommend to Congress by April 15 of each year an update to the fee schedule conversion factor for the following calendar year. In making the recommendation, the Secretary is required to consider the increase in the MEI, the percentage increase in aggregate expenditures for physicians' services in the first preceding fiscal year over the second preceding fiscal year compared to the performance standard rate of increase set for the first preceding fiscal year, access to services, changes in volume and intensity of services, and other factors he or she considers appropriate.

Congress may choose to adopt the Secretary's recommendation, enact some other update amount, nor not act at all. If Congress does not act, the annual update is set according to a "default" mechanism in the law. The law states that the update must equal the percentage increase in the "appropriate update index" (that is, the MEI) adjusted by the amount the annual expenditure increase for the first fiscal year preceding the recommendation was greater or less than the performance standard rate of increase for that fiscal year. When the default mechanism is used and the performance standard exceeded, the law provides that the maximum reduction in the MEI in accordance with the performance adjustment will be 2 percent for 1992 through 1993, 2.5 percent for 1994 through 1995, and 3 percent thereafter.

The current MEI represents a weighted sum of price changes for various inputs needed to produce physicians' services. Since its inception, it has consisted of two principal components, or expense categories. One measures changes in general earnings levels applied to the physicians' net income portion, and the other reflects changes in physicians' practice expenses. These two categories have been given weights of 60 percent and 40 percent, respectively, representing an average division of physicians' gross revenues between net income and practice expenses. Changes in general earnings levels are measured using the rate of increase in average weekly earnings of nonagricultural production and nonsupervisory workers in the overall economy, as measured by the Bureau of Labor Statistics (BLS). The general earnings portion of the MEI is further adjusted for changes in worker productivity for the nonfarm business sector. The productivity adjustment is discussed in greater detail in section III.F. of this preamble.

The physicians' practice expense portion of the MEI currently consists of six categories:

- Wages and salaries for nonphysician employees.
- Office space.
- Drugs and supplies.
- Professional liability insurance premiums.
- Automobile expenses.
- All other miscellaneous expenses.

Each of these categories is assigned a weight based on a special HCFA study of physicians' revenues and expenses. (Health Care Financing Administration, Medicare Program: **Federal Register**, Vol. 51, No. 154, August 11, 1986, 28775.) Table 1 shows the weights and price proxies for the current MEI.

TABLE 1.—CURRENT MEDICARE ECONOMIC INDEX EXPENDITURE CATEGORIES, WEIGHTS, AND PRICE PROXIES

Expense category	Weight [1] (percent)	Price proxy
Total	100.0	
1. General earnings (net income)	60.0	Average weekly earnings, production and nonsupervisory workers.[2]
2. Physician practice expense	40.0	
a. Nonphysician employees	18.8	Average hourly earnings, finance, insurance, and real estate.
b. Office space	9.2	CPI-W housing.
c. Drugs and supplies	3.6	PPI drugs and pharmaceuticals.
d. Malpractice insurance	4.0	HCFA survey, change in average premiums for $100,000/$800,000 professional liability coverage, 9 major insurers.
e. Automobile	2.8	CPI-W private transportation.
f. Other	1.6	CPI-W, all items.

[1] Source: Health Care Financing Administration, Medicare Program: **Federal Register**, vol. 51, No. 154, August 11, 1986, 28775.
[2] Net of change in annual output per hour to exclude changes in economy-wide labor productivity.

Although the subcategory cost weights comprising the physicians' practice expense category of the MEI have been revised periodically in updating the index, the overall category weight has been fixed at 40 percent since the MEI was first adopted. In addition, the expense categories and price proxies created in 1975 have remained unchanged with one exception—the addition of a category for physicians' professional liability insurance premium expenses. This category is discussed in section III.E.5 of this preamble.

For a given 12-month period, or fee screen year (FSY), the rate of increase in the MEI is the change in the index value for a prior 12-month period ending 6 months before the beginning of the FSY. For example, when the FSY begins on January 1, the increase in the MEI is measured using the change in the index values from the 12-month period ending June 30 preceding the beginning of the FSY. Historical, rather than forecasted, changes in the MEI have been used to limit increase in physicians' prevailing charge limits, based on the Senate Finance Committee's intent that such increases should follow, rather than lead, inflation. Until 1987, the current MEI was a cumulative index with a value which, at any given time, depended on the calculations of previous years. Thus, any changes in the index, such as historical data revisions, or the addition of a category for physicians' malpractice insurance costs, or the periodic reweighting of the six categories which comprise the physicians' practice expense portion of the measure, or proposed changes in the price proxies, required recomputing the MEI back to its 1971 base period. This recalculation from the base year to the current year insured that the MEI was defined consistently over time, and that year-to-year comparisons were valid.

In the August 11, 1996, **Federal Register** (51 FR 28766), HCFA proposed that the MEI be revised to reflect physicians' office space and miscellaneous expenses more accurately by substituting revised price proxies. For the price proxy for physicians' office space, HCFA proposed that the residential rent index subcomponent of the housing component replace the mortgage interest subcomponent for the

years in which the housing component of the CPI did not incorporate a measure of rental equivalence. For "other" professional expenses, HCFA proposed replacing the CPI–W, a CPI series for urban wage earners and clerical workers, with the CPI–U series, a measure of the CPI that includes a broader population base. We believed that these revisions would have resulted in a more appropriate and technically accurate MEI.

As a result of the enactment of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509) on October 21, 1986, our proposed revisions to the MEI were not implemented. Public Law 99–509 contained several provisions that directly affected the 1987 MEI as well as future updates of the index. Section 9331 of Public Law 99–509:

- Established the percentage increase in the MEI for FSY 1987 at 3.2 percent (section 9331(c)(1));
- Prohibited revising the MEI to substitute a rental equivalence subcomponent within the housing component of the CPI for any period before January 1, 1985 (section 9331(c)(2));
- For FSYs after 1987, required that the MEI be revised to reflect year-to-year economic changes (section 9331(c)(3));
- Required the Secretary, in consultation with appropriate experts, to conduct a study of the extent to which the MEI appropriately and equitably reflects economic changes in the provision of physicians' services to Medicare beneficiaries (section 9331(c)(4)); and
- Prohibited revising the methodology in effect for calculating the MEI as of October 1, 1985 until after completion of the aforementioned study, and then permitted revision only after HCFA provided notice and the opportunity for public comment (section 9331(c)(5)).

The allowed percentage increases in the MEI have been prescribed by Congress for April 1988 through December 1991. From April 1, 1988 through December 31, 1988, the MEI increase was 3.6 percent for primary care services and 1 percent for other services. From January 1, 1989 through March 31, 1990, the MEI increase was 3 percent for primary care services and 1 percent for other services. From April 1, 1990 through December 31, 1990, the increase for primary care services was set at the MEI increase and 2 percent for other services. The MEI increase for April 1, 1990 was 4.2 percent. From January 1, 1991 through December 31, 1991, the MEI increase was 2 percent for primary care services and 0.0 percent for other services.

II. Public Comments on Revising the MEI

In conformance with the provisions of sections 9331(c) (4) and (5) and Public Law 99–509, which require a study of the MEI and a notice and opportunity for public comment before revision of methodology for calculating the MEI, and in order to obtain a broad range of views on potential improvements in the MEI, HCFA sponsored a conference that was held on March 19, 1987, in Washington, DC. Participants included representatives from the Federal government, the Physician Payment Review Commission, the American Medical Association (AMA), and several consulting firms. The workshop's participants discussed a wide range of topics and, though they did not reach a consensus on specific modifications to the MEI, they did agree that the following issues might be considered in any proposed revision of the index:

- Adoption of a specific type of index for developing the MEI (for example, Laspeyres, Paasche, etc.).
- Use of more current data to develop reweighted expense categories.
- Development of revised expense categories that more accurately reflect physicians' and nonphysicians' inputs in providing services.
- Selection of appropriate price proxies for monitoring the rate of price change in each expense category.
- Development of a revised method to reflect productivity changes in a new MEI.

Each of these issues is addressed below in our reassessment of the MEI.

III. Proposed MEI Methodology

A. Adoption of a Specific Type of Index

The two traditional index formulas used to express comparisons and to measure change are the Laspeyres and Paasche indexes. In slightly different ways these two indexes answer the question of how much goods and services cost today, as compared with the cost in a base period. The Laspeyres index measures the cost of the package of goods and services actually bought in the base period, while the Paasche index measures the cost of the package actually bought in the current period.

The current MEI does not follow the form of either a traditional Laspeyres or a Paasche price index precisely. A Laspeyres index has fixed base year expenditure weights. However, the "relative importance" of each expenditure category changes over times as the price proxies for these categories change at different rates. The relative importance can be thought of as a cost weight adjusted for relative price changes, that is, a base year cost weight cumulatively adjusted for the different relative rates of price growth for each cost category in the input price index from the base year to the present year. Expenditure categories and relatively higher price increases over time have higher relative importance values. The relative importance values thus reflect differences in the inflation rates of different cost components. However, the current MEI holds the relative importance values of the physicians' practice expense (40 percent) and general earnings (60 percent) components at base year weights, regardless of any difference in rates of change for physicians' practice expenses and general earnings price proxies.

In addition, the current MEI is unlike a Paasche index, in which revised expenditure weights are computed each time the index is recalculated (for example, annually, quarterly, etc.). While the MEI's weighting methodology may not be a sufficient reason for revising the index, adoption of a more traditional price index would improve the ability of all concerned to know how much increases in physicians' charges reflect changes in the prices of inputs required to produce physicians' services.

There are practical reasons for choosing the Laspeyres format. For a Paasche index, new weights are required for each unit of time for which the measure is computed. Adopting a Paasche index means that each quarter, for example, one must incur the expense and effort of creating new weights because the weights change each time the Paasche is computed. This type of index makes it difficult to separate increases in production costs due to changes in prices of inputs and changes in quantities of inputs. A Laspeyres physicians' input price index would give a better measure of "pure" price increases for inputs into physicians' care, that is, how much the cost of producing care increased due to price increases in a fixed quantity and mix of production inputs. HCFA's current input price indexes for hospitals, home health agencies, and skilled nursing facilities are all Laspeyres indexes.

A traditional Laspeyres, or fixed-weight, input price index is constructed as follows. First, a base period is selected. For example, for the prospective payment system hospital input price index, the base period is 1987. Next, a set of cost categories, such as food, fuel, and labor, are identified and their base year expenditure levels determined. The proportion or share of total expenditures accounted for by

specific spending categories is calculated. These proportions are called cost or expenditure weights. Finally, a price proxy is selected to match each expenditure category. The purpose of the price proxy is to measure the rate of price change for each expenditure category over time. The price proxy index for each spending category is multiplied by the expenditure weight for that category. The sum of these products (weights multiplied by price indexes) over all cost categories yields the composite input price index for any time period, usually a calendar or fiscal year. The percent change in the input price index is an estimate of price change over time for a fixed quantity of goods and services purchased by a provider.

A Laspeyres input price index is described as a fixed-weight index because it answers the question of how much more it would cost at a later time to purchase the same mix of goods and services that was purchased in the base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent to the base period are not measured by a fixed weight index. For example, widespread shifting of the site of a particular type of physicians' care from a hospital inpatient setting to an office might change the mix and volume of physicians' inputs over time. However, a Laspeyres input price index, with its fixed base year weights, would not reflect these changes until the measure is rebased, that is, until revised input cost weights are developed. The characteristic of a fixed weight index which ignores the possibility of substituting cheaper inputs for more expensive inputs is sometimes called "substitution bias". It is for both changes in practice patterns and substitution bias that base year weights must be updated periodically.

B. Use of More Current Data

The expenditure weights that comprise the physicians' expense portion of the current MEI were developed from a special study conducted by a contractor for HCFA in 1982. The study was based on a national sample representing the distribution of non-Federal physicians in the United States, and it relied on available expense data for calendar year 1977. Because these data no longer reflect current physicians' practices in purchasing goods and services, especially in light of changes associated with the onset of the Medicare prospective payment system, we believe use of more recent data is appropriate.

In developing the revised MEI, two major data sources were available for estimating a current set of weights or cost shares: The AMA Socioeconomic Monitoring System (SMS) Survey (Center for Health Policy Research, A.M.A., "Physician Marketplace Statistics, Fall 1990," M. Gonzalez, ed. 1990) and the Medical Economics survey of practice expenses and earning (Holoweiko, "Practice Expenses Take the Leap of the Decade," vol. 67, no. 22, Medical Economics, p. 98 [1990]). Both the AMA and Medical Economics surveys are samples, but only the AMA survey is a stratified random sample that is statistically representative of non-Federal physicians (excluding residents) in the United States. The AMA data is presented as both means (averages) and medians, whereas the Medical Economics data is only presented as medians.

Due to the superior representativeness of the AMA sample and the availability of means, we chose to use the AMA data for developing the main weights (cost shares) for the revised MEI. We also used data from Medical Economics and from a special study conducted by HCFA's Office of the Actuary to supplement the AMA data when we needed additional detail in cost categories.

C. Development of Revised Expense Categories

Several criteria were used for choosing the number and composition of alternative expenditure categories in the revised MEI. First, the categories should be mutually exclusive of each other and exhaustive of all cost components. Second, the makeup of expense categories should be homogeneous within categories and heterogeneous among categories. Third, the composition of expense categories should correspond to specific available price indexes; that is, the categories should be chosen to map into the relevant price data series. Fourth, the number of expense categories should be large enough to accurately capture the separate inflationary processes affecting total practice costs, but not so detailed or disaggregated that reliable data are not available for validly delineating the cost shares. Fifth, preference should be given to obtaining the cost shares from a single data source to the extent this is feasible. Choosing the number and composition of expense categories involves making tradeoffs among the five criteria listed above.

TABLE 2.—PROPOSED MEDICARE ECONOMIC INDEX EXPENDITURE CATEGORIES, WEIGHTS AND PRICE PROXIES

Expense category	Weights (1989) [1 2] (percent)	Price proxy
Total	100.0	
1. Physician's own time (net income, general earnings)	54.2	
a. Wages and salaries	45.3	Average hourly earnings, total private nonfarm.[3]
b. Fringe benefits	8.8	Employment Cost Index, benefits, private nonfarm.[3]
2. Practice expenses	45.9	
a. Nonphysician employee compensation	16.3	
1. Wages and salaries	13.8	Employment Cost Index, wages and salaries weighted for occupational mix of nonphysician employees.[3]
2. Fringe benefits	2.5	Employment Cost Index, benefits, white collar.[3]
b. Office expenses	10.3	CPI-U Housing.
c. medical materials and supplies	5.3	PPI Ethical drugs, PPI Surgical appliances and supplies, and CPI-U Medical equipment and supplies (equally weighted).
d. Professional liability insurance	4.8	HCFA survey, change in average premiums for $100,000/$300,000 professional liability coverage among 9 major insurers.
e. Medical equipment	2.3	PPI Medical instruments and equipment.
f. Other professional expenses	6.9	
1. Automobile	1.4	CPI-U, Private transportation.
2. Other	5.5	CPI-U All items less food and energy.

[1] Sources: Martin L. Gonzalez, ed.: Physician Marketplace Statistics, Fall, 1990. Center for Health Policy Research, Chicago, American Medical Association, 1990; Mark Holoveiko, "Practice Expenses Take the Leap of the Decade," Medical Economics, November 12, 1990; and HCFA, Office of the Actuary, special study.

[2] Due to rounding, weights may not sum to 100.0%.

[3] Net of change in ten-year moving average of output per man-hour to exclude changes in economy-wide labor productivity.

In developing the revised MEI, we used data from the AMA on mean physician net income and professional expenses to weight seven major expenditure categories. These categories, shown in table 2, include physicians' net income (primarily reflecting physicians' time), nonphysician payroll, office expenses, medical supplies, professional liability insurance, medical equipment, and other professional expenses. For the seven major categories, we determined the proportion each represents of total practice expenses for self-employed physicians, including net income. These proportions represent the major expenditure weights for constructing a revised MEI. Three of these major categories (physicians' net income, nonphysician payroll, and other professional expenses) were disaggregated into subcategories reflecting more specific physician expenses. The physician time and nonphysician employee compensation categories were divided to include a fringe benefits subcategory using the relationship between fringe benefits and other compensation, based on a special study conducted by HCFA's Office of the Actuary. The "other professional expenses" category was subdivided into two categories. A weight for professional car was obtained from Medical Economics data (Holoweiko, 1989). The final subcategory, miscellaneous expenses, was calculated as a residual. This resulted in 10 separate cost categories for construction of a revised MEI. Table 2 shows all of the revised MEI index categories and corresponding 1989 weights. Table 3 shows the comparison of the weights for the proposed MEI and the current MEI.

TABLE 3.—CURRENT AND PROPOSED MEDICARE ECONOMIC INDEX: EXPENDITURE CATEGORIES AND THEIR ASSOCIATED WEIGHTS

Expense category	Current [1] weights (percent)	Proposed [2] weights (1989) (percent) [3]
Total	100.0	100.0
1. Physician's own time (general earnings)	60.0	54.2
a. Wages and salaries		45.3
b. Fringe benefits		8.8
2. Physician practice expense	40.0	45.9
a. Nonphysician employee compensation	18.8	16.3
(1) Wages and salaries		13.8
(2) Fringe benefits		2.5
b. Office expenses	9.2	10.3
c. Medical materials and supplies	3.6	5.3
d. Professional liability insurance	4.0	4.8
e. Medical equipment		2.3
f. Other professional expenses		6.9
(1) Automobile	2.8	1.4
(2) Other	1.6	5.5

[1] Source: Health Care Financing Administration, Medicare Program; Medicare Economic Index, **Federal Register**, Vol. 51, No. 154, August 11, 1986, p. 28775.
[2] Sources: Martin L. Gonzalez, ed.: Physician Market Place Statistics, Fall, 1990. Center for Health Policy Research, Chicago, American Medical Association, 1990. Mark Holoweiko, "Practice Expenses Take the Leap of the Decade," Medical Economics, November 12, 1990; and HCFA, Office of the Actuary, special study.
[3] Due to Rounding, weights may not sum to 100.0%.

D. Selection of Price Proxies

After the 1989 cost weights for the revised MEI were developed, appropriate proxies to monitor the rate of price change for each expenditure category were selected. Most of the indicators considered are based on BLS data and are grouped into one of the following five categories:

• Producer Price Indexes (PPIs). PPIs are used to measure price changes for goods sold in other than retail markets. They are the preferable proxies for physicians' purchases at the wholesale level. These indexes, which are fixed-weight, measure price change at the producer or intermediate stage of production.

• Consumer Price Indexes (CPIs). CPIs measure change in the prices of final goods and services bought by consumers. Similar to the producer price indexes, they are fixed-weighted. Because they may not represent the price changes faced by producers, consumer price indexes were used if no appropriate producer price index was available, or if the expenditure was similar to that of retail consumers in general, rather than to a purchase at the wholesale level.

• Employment Cost Indexes (ECIs) for wages and salaries. ECIs for wages and salaries measure the rate of change in employee wage rates per hour worked. These indexes are fixed-weight indexes that measure strictly the change in straight time hourly wage rates. They are not affected by shifts in industry or occupation employment levels.

• Employment Cost Indexes (ECIs) for employee benefits. ECIs for employer costs of employee benefits include such benefits as social security, pension and other retirement plans, insurance benefits (life, health, sickness, and accident), and paid leave. Like ECIs for wages and salaries, they are not affected by changes in industry output or occupational shifts.

• Average Hourly Earnings (AHEs). AHEs permit the measurement of changes in hourly earnings for specific industries, as well as the nonfarm business economy. Average hourly earnings are calculated by dividing gross payrolls for wages and salaries by total hours. The series reflects shifts in employment mix and is thus representative of actual changes in hourly earnings for industries or for the economy as a whole.

• Average Weekly Earnings (AWEs). Like average hourly earnings, AWEs permit the measurement of changes in earnings for specific industries and for the non-farm business economy. AWEs are calculated by dividing gross payrolls for wages and salaries by total weeks worked. Also like average hourly earnings, the series reflects shifts in employment mix. Changes in AWEs represent actual changes in earnings as opposed to statistical constructs that hold the mix of employees constant

Changes in AWEs are affected by changes in the length of work week.

As with choosing the expenditure categories, choosing appropriate wage and price proxies for each expense category necessarily involves making tradeoffs and using professional judgment. The strengths and weaknesses of each proxy variable need to be evaluated using several criteria that can potentially conflict.

The first criterion is relevance. The price variable should appropriately represent price changes for specific goods or services within the expense category. Relevance may encompass judgments about relative efficiency of the market generating the price and wage increases and may include normative factors relating to fairness and national policy objectives.

The second criterion is reliability or low sampling variability. If the proxy wage-price variable has a high sampling variability or inexplicable erratic patterns over time, its value is greatly diminished since it is unlikely to accurately reflect price changes in its associated expenditure category. Low sampling variability can conflict with relevance, since the more specifically the price variable is defined in terms of service, commodity, or geographic area, the higher the sampling variability in some cases.

Timeliness of actual published data is the third criterion. For this reason, monthly and quarterly data take priority over annual data.

The fourth criterion is the length of time the time-series data has been in use. A well-established time series is needed to provide a solid base from which to forecast future price changes in the series. Forecasting the MEI is required in making Federal budget estimates.

The Bureau of Labor Statistics price proxy categories previously described meet the criteria of reliability, timeliness, and time-series length. The main issue in selecting price proxies for the revised MEI is relevance. We chose the price-wage proxies shown in table 2 for the revised MEI. Table 4 also compares the price-wage proxies for the proposed MEI and the current MEI.

Tables 5 and 6 shown comparative historical and forecasted annual percent changes for the current MEI and the proposed MEI. Table 5 shows the current MEI annual percent changes.

TABLE 4.—CURRENT AND PROPOSED MEDICARE ECONOMIC INDEX: EXPENDITURE CATEGORIES AND THEIR ASSOCIATED PRICE PROXIES

Expense category	Current price proxy	Proposed price proxy
1. Physician own time (general earnings)	Average weekly earnings, production and non-Supervisory workers, private non-farm[1].	
a. Wages and Salaries		Average hourly earnings, private non-farm.[2]
b. Fringe Benefits		Employment Cost Index, Benefits, Private Non-Farm.[2]
2. Physician practice expense:		
a. Nonphysician employee compensation	Average hourly earnings, finance, insurance and real estate.	
(1) Wages and salaries		Employment Cost Index, Wages and Salaries, Weighted for Occupational Mix of Non-physician Employees.[2]
(2) Fringe benefits		Employment Cost Index, Benefits, White Collar.[2]
b. Office expenses	CPI-W housing	CPI-U housing.
c. Medical materials and supplies	PPI drugs and pharmaceuticals	PPI ethical drugs, PPI surgical appliances and supplies, and CPI-U medical equipment and supplies (equally weighted).
d. Professional liability insurance	HCFA survey, change in average premiums for $100,000/$300,000 professional liability coverage, 9 major insurers.	Same.
e. Medical equipment	* * * Category Not Used * * *	PPI Medical Instruments and Equipment
f. Other professional expenses:		
(1) Automobile	CPI-W private transportation	CPI-U private transportation.
(2) Other	CPI-W all items	CPI-U all items less food and energy.

[1] Net of change in annual output per hour to exclude changes in economy-wide labor productivity.
[2] Net of change in ten-year moving average of output per man-hour to exclude changes in economy-wide labor productivity.

TABLE 5.—ANNUAL PERCENT CHANGE IN THE CURRENT MEDICARE ECONOMIC INDEX

[Years Ending June 30 (not fee Screen Years), 1984–1995]

	Weight (percent)	Historical							Forecasted[1]		Average 1984–1990	Average 1991–1992
		1984	1985	1986	1987	1988	1989	1990	1991	1992		
Total MEI[2]		3.2	3.4	2.7	3.7	3.2	4.0	4.6	4.1	3.4	3.5	3.8
General earnings[3]	60.0	5.1	2.9	2.3	1.7	2.9	3.6	3.7	3.5	4.1		
Non-physician employment	18.8	5.5	4.3	4.8	4.9	3.6	5.0	4.8	5.0	5.2		
Office space	9.2	1.5	3.8	3.7	2.4	3.4	3.7	4.0	4.8	3.4		
Automobile	2.8	4.2	3.1	−0.6	−3.6	5.2	4.4	3.6	7.6	4.3		
Drugs and supplies	3.6	6.7	6.3	7.0	6.8	6.3	7.9	7.2	6.5	7.8		
Liability insurance	4.0	8.9	16.3	21.2	42.7	36.6	20.0	0.3	3.4	3.6		
Other	1.6	3.0	3.7	2.6	1.9	4.1	4.6	4.7	6.1	4.0		
Productivity		3.0	0.8	1.6	0.7	2.3	1.1	−1.0	0.1	1.5		
General earnings (Productivity adjusted)	60.0	2.0	2.0	0.6	1.1	0.6	2.5	4.8	3.4	2.5		

[1] Price proxies forecasted by DRI/McGraw-Hill, November, 1990.
[2] The total MEI is computed using general earnings adjusted for productivity.
[3] General Earnings is presented prior to the adjustment for productivity.

Table 6 shows annual percent changes in the proposed MEI. The average trends in the current and proposed MEI are very close in both the historical and the forecasted period (within 0.1 percent) (tables 5 and 6). The volatile annual productivity adjustment in the current MEI results in annual values of the current and proposed MEI that vary as much as a percentage point in any one year. For example, in 1990 the proposed MEI increased 3.6 percent, a full percentage point below the current MEI increase of 4.6 percent.

TABLE 6.—Annual Percent Change in the Proposed Medicare Economic Index and by Expenditure Category

[Years Ending June 30 (not fee Screen Years), 1984-1995]

	1989 weight [2] (percent)	Historical							Forecasted [1]		Average	Average
		1984	1985	1986	1987	1988	1989	1990	1991	1992	1984-1990	1991-1992
Proposed expenditure category:												
Total MEI [3]	100.00	4.2	3.5	2.9	3.0	4.1	4.2	3.6	4.0	3.7	3.6	3.9
1. Physician's Own Time [4]	54.2	4.5	3.6	2.9	2.2	3.2	4.2	4.4	4.5	4.4		
a. Wages and Salaries	45.3	4.0	3.3	2.8	2.1	3.0	3.8	4.0	4.1	4.1		
b. Fringe Benefits	8.8	7.4	5.6	3.7	3.2	4.7	6.1	6.1	6.5	6.0		
2. Practice Expenses	45.9	4.9	4.9	4.5	5.4	6.4	5.7	4.2	5.0	4.7		
a. Employee Compensation [4]	16.3	6.1	4.9	4.1	3.5	4.0	4.5	4.8	4.9	5.2		
(1) Wages and Salaries	13.8	5.8	4.7	4.1	3.5	3.9	4.3	4.3	4.7	5.0		
(2) Fringe Benefits	2.5	7.9	6.1	4.3	3.4	4.5	6.1	7.1	6.3	5.8		
b. Office Expense	10.3	3.0	4.2	3.7	2.5	3.5	3.8	4.1	5.6	3.9		
c. Medical Materials, Supplies	5.3	5.5	5.3	5.2	6.5	6.2	4.4	6.8	6.0	7.4		
d. Professional Liability Insurance	4.8	8.9	16.3	21.1	42.7	36.6	20.0	0.3	3.4	3.6		
e. Medical Equipment	2.3	3.3	1.2	−0.9	1.9	−1.3	3.4	3.2	2.1	2.9		
f. Other Professional Expense	6.9	4.3	4.3	3.2	2.4	4.4	4.5	4.4	5.5	4.1		
Productivity		0.6	0.9	0.9	0.8	0.8	0.9	1.0	1.0	1.1		
Productivity Adjusted Compensation												
(1) Physician's Own Time	54.2	3.9	2.7	2.0	1.4	2.4	3.3	3.3	3.4	3.3		
Wages and Salaries	45.3	3.4	2.3	1.9	1.3	2.2	2.9	2.9	3.0	3.0		
Fringe Benefits	8.8	6.8	4.6	2.8	2.4	3.9	5.2	5.5	5.5	4.8		
(2) Employee Compensation	16.3	5.5	3.9	3.2	2.7	3.2	3.6	3.7	3.8	4.0		
Wages and Salaries	13.8	5.2	3.7	3.2	2.7	3.1	3.3	3.3	3.6	3.9		
Fringe Benefits	2.5	7.2	5.2	3.4	2.6	3.7	5.2	6.0	5.2	4.6		

[1] Price proxies forecasted by DRI/McGraw-Hill, November, 1990.
[2] Due to rounding, weights may not sum to 100%.
[3] Total MEI is computed using productivity adjusted wages and salaries and fringe benefits series for both physicians own time and nonphysician employee compensation.
[4] Wages and salaries and fringe benefits are presented unadjusted for productivity.

E. Expense Categories

1. General Earnings

Because the physician's time is the single largest cost component in the proposed MEI (54.2 percent), the selection of the price proxy for the wages and salary cost category is a major determinant of the rate of change in the MEI. For that reason we are providing an extended discussion of the selection of the price proxy for the wages and salary component.

The legislative history of the MEI reveals Congressional concern that increases in physicians' charges were a cause, rather than a result, of inflation. The following language from the Senate Finance Committee report accompanying the 1972 Social Security Amendments makes that point clearly:

> The committee * * * believes that it is necessary to move in the direction of an approach to reasonable charge reimbursement that ties recognition of fee increases to appropriate economic indexes so that the program will not merely recognize whatever increases in charges are established in a locality but would limit recognition of charge increases to rates that economic data indicate would be fair to all concerned (emphasis added) and follow rather than lead inflationary trends. * * * Initially, the Secretary would be expected to base the proposed economic indexes on presently available information on changes in expenses of practice and general earnings levels * * *.
>
> [S. Rep. No. 1230, 92d Cong., 2d Sess. 190-191 (1972)].

There is obvious circularity if increases in prevailing charges are linked to increases in physicians' charges which are then tied to increases in physicians' income. The committee's expectation that the rate of price inflation assigned to the physicians' time portion of the MEI be permitted to increase by an amount consistent with increases in general earnings levels seems to reflect Congress' preference for an equitable external price proxy; that is, a compensation proxy based on compensation outside or external to the physicians' service industry. We examined six principal alternatives for the wages and salary component of the physicians' time cost category:

- The Use of Weekly Earnings for Production and Nonsupervisory Workers in the Private Nonfarm Economy.

This option is used in the current MEI and is consistent with the Senate Finance Committee expectation that the price proxy reflect changes in general earnings levels.

As mentioned previously, AWEs are actual payment rates reflecting underlying changes in employment patterns within and across industries. Since the length of the average work week changes over time, the measure is not as stable as average hourly earnings. If the average hours worked per week changes over time, this variation in the amount of actual labor input per week worked influences average weekly earnings.

- The Use of Average Hourly Earnings for Production and Nonsupervisory Workers in the Total Private Nonfarm Economy.

This option suggests a standard of payment which implies that price increases for the physicians' labor component should be the same as for workers in the overall economy, that is, general earnings. This option presumes that the price increase for the physicians' time category (excluding fringe benefits) should be comparable to that of employees in the general economy, and reflecting the changing mix of industry output and employment. This alternative appears to most closely approximate the Senate Finance Committee's reference to general earnings levels. This alternative takes into account both society's ability to pay and the criterion outlined by the Committee. Since earnings are per hour, a constant quantity of labor input per unit of time is reflected, as compared to the potentially variable quantity of labor input when average weekly earnings is the measure used. In addition, the use of average hourly earnings data is consistent with the BLS labor productivity measures. The proposed MEI as well as the current MEI incorporates an adjustment for labor productivity, so this consistently is noteworthy.

• The Use of the ECI for Wages and Salaries for the Total Private Nonfarm Economy.

This option suggests a standard of payment which implies that price increases for the physicians' labor component should be the same as that for workers in a hypothetical overall economy in which there are no shifts in the employment patterns of workers. The overall ECI weights nine broad occupational categories, and permits measurement of the change in the hourly straight time wage rate for private industry workers (Nathan, 1987 and Schwenk, 1985). ECIs are unaffected by changes in occupational employment shifts or industry output shifts. Therefore, this alternative would not recognize changes in the composition of the work force over time.

• The Use of an ECI for Wages and Salaries for Private Professional and Technical Workers.

This proxy implies that price changes in the physicians' time component, excluding fringes, should correspond to those for private sector professional/technical workers. Professional/technical workers is one of the nine occupational categories which comprise the overall ECI. Physicians are a tiny subset of this occupational group. The supply/demand characteristics of this broad category may be different from the supply and demand characteristics of an efficient market for physicians' services. Most professional/technical workers are in labor markets where firms compete for employees. Most office-based physicians are self-employed. Use of this price series would take the MEI away from the general earnings concept specified in the original legislation.

• The Use of the Rate of Increase in the CPI for All Items.

This alternative suggests that the rate of increase in the physician time category, excluding fringes, should be closely related to an economy-wide cost of living index. Because labor contracts, cost of living allowances, numerous health insurance contracts, and preferred provider organization physician agreements are widely linked to this measure, use of this option has substantial precedence. Unfortunately, an index tied to the CPI can result in financing problems in periods in which consumer prices are rising substantially faster than rates. This disparity occurs because tax revenues which fund Medicare's payments to physicians largely depend on wage rate increases, while outlays would be a function of the rise in prices as measured by the CPI. (Congressional Budget Office, 1981).

• The Use of a Price Proxy for Salaried Physicians.

This option relies on an "opportunity cost" approach in that it suggests price increases in the physicians' time category (excluding fringes) should be neither greater nor less than what would be obtained among salaried physicians (for example, those working in Federal institutions or employed in Health Maintenance Organizations (HMOs)). The use of HMO wages would require the use of a proprietary data source for development of the price proxy. In addition, these data may not reflect the market forces we are trying to approximate. Salaried physicians are disproportionately represented by younger physicians and females (Cotter, 1986). Therefore, the levels and rates of change of wages and salaries may be substantially distorted, compared to rates appropriate for physicians as a whole in an efficient market. In addition, wage and salary levels and rates of increase for employed physicians may be influenced by trends in the incomes of fee-for-service physicians. Therefore, we excluded from further consideration use of this price proxy.

Each of the above options implies a different standard of equity. In table 7, we have presented the fiscal year rates of change for five of the six price variables suggested as options. We were not able to obtain data on HMO wage rates that are comparable to the other five possible wage and salary proxies.

TABLE 7.—ANNUAL PERCENT CHANGE IN ALTERNATIVE PRICE PROXIES FOR THE WAGES AND SALARIES COMPONENT OF PHYSICIAN'S OWN TIME: YEARS ENDING JUNE 30 (NOT FEE SCREEN YEARS), 1982–1995.

Fiscal year	Current MEI	Proposed MEI	ECI, private nonfarm	ECI professional/technical	CPI-U, all items
	Average weekly earnings—private nonfarm	Average hourly earnings[1]—private nonfarm			
Historical:					
1982	6.6	7.6	8.2	10.2	8.7
1983	4.5	4.9	6.0	6.9	4.3
1984	5.1	4.0	4.9	6.8	3.7
1985	2.9	3.3	4.2	4.6	3.9
1986	2.3	2.8	4.1	4.0	2.9
1987	1.7	2.1	3.1	3.8	2.2
1988	2.9	3.0	3.4	4.4	4.2
1989	3.6	3.8	4.0	4.6	4.6
1990	3.7	4.0	4.3	4.7	4.7
Average:					
1982–90	3.7	3.9	4.7	5.6	4.4
1985–90	2.9	3.2	3.9	4.4	3.8
Forecast (11/90): [1]					
1991	3.5	4.1	4.7	5.0	6.2

TABLE 7.—ANNUAL PERCENT CHANGE IN ALTERNATIVE PRICE PROXIES FOR THE WAGES AND SALARIES COMPONENT OF PHYSICIAN'S OWN TIME: YEARS ENDING JUNE 30 (NOT FEE SCREEN YEARS), 1982-1995.—Continued

Fiscal year	Current MEI	Proposed MEI	ECI, private nonfarm	ECI professional/technical	CPI-U, all items
	Average weekly earnings—private nonfarm	Average hourly earnings[1]—private nonfarm			
1992	4.1	4.1	4.7	5.5	4.1
Average	3.8	4.1	4.7	5.3	5.2

[1] Forecasted by DRI/McGraw-Hill, November, 1990.

We propose using average hourly earnings for the total private nonfarm economy as the proxy of choice for the physicians' wages and salaries component of the revised input price index. In our judgment, this alternative most closely comports with Congressional intent, as expressed in the Senate Finance Committee's 1972 report referenced above. Average hourly earnings incorporates a standard which presumes that increases in the physicians' wages and salaries component should be neither greater nor less than the rate of increase in general earnings levels. To the extent that a different price proxy would result in a greater increase than that for the average worker, physicians would benefit from an implicit income transfer. Conversely, use of a proxy which would result in less of an increase in this component than that of general earnings levels would reverse that transfer in favor of workers. Average hourly earnings change in accordance with market forces associated with changes in the type and mix of workers. This not the case with ECIs, since ECIs reflect a fixed composition of the work force at a given point in time. Therefore, the rate of change in an ECI may differ substantially from an actual average hourly earnings measure. Input price indexes used for inflation adjustment and payment often incorporate average hourly earnings variables. For example, the current MEI and HCFA hospital, skilled nursing facility, and home health agency input price indexes all combine average hourly earnings variables with various other price indexes.

The average rate of increase in average hourly earnings for the private nonfarm economy for the period 1982 to 1990 was 3.9 percent (table 7). This compares to the 3.7 percent average increase for average weekly earnings incorporated in the current MEI (table 7).

Table 8 shows the annual percent change in the proposed MEI using alternative price proxies for the wages and salary component of physicians' time. The table also shows in parentheses the numeric difference between the current MEI and proposed MEI using these alternative proxy variables. The proposed MEI, using average hourly earnings as the price proxy for the wages and salaries component of physicians' time, increased at an average rate of 4.3 percent for the period 1982 to 1990 (see table 8). The current MEI increased at an average rate of 4.2 percent during this same period (table 8).

TABLE 8.—ANNUAL PERCENT CHANGE IN THE PROPOSED MEDICARE ECONOMIC INDEX USING ALTERNATIVE PROXIES FOR THE WAGES AND SALARIES COMPONENT OF PHYSICIAN'S OWN TIME, AND DIFFERENCE FROM THE CURRENT MEI: YEARS ENDING JUNE 30 (NOT FEE SCREEN YEARS), 1982-1992

[In percent]

Fiscal year	Current MEI	Proposed MEI		Proposed MEI structure with alternative price proxies for physician's own time[1]							
		Average hourly earnings—Private nonfarm		Average weekly earnings—Private nonfarm		Employment compensation index—Private nonfarm		Employment compensation index—Professional and technical		Consumer price index—All items	
	Average weekly earnings—Private nonfarm	Change	Difference	Change	Difference	Change	Difference	Change	Difference	Change	Difference
	Change										
Historical:											
1982	8.4	8.1	(−0.3)	7.6	(−0.8)	8.4	(0.0)	9.4	(1.0)	8.6	(0.2)
1983	5.0	5.3	(0.3)	5.1	(0.1)	5.8	(0.8)	6.2	(1.2)	5.0	(0.0)
1984	3.2	4.2	(1.0)	4.8	(1.6)	4.7	(1.5)	5.6	(2.4)	4.1	(0.9)
1985	3.4	3.5	(0.1)	3.3	(−0.1)	3.9	(0.5)	4.1	(0.7)	3.8	(0.4)
1986	2.7	2.9	(0.2)	2.7	(0.0)	3.6	(0.9)	3.5	(0.8)	3.0	(0.3)
1987	3.7	3.0	(−0.7)	2.8	(−0.9)	3.5	(−0.2)	3.8	(0.1)	3.1	(−0.6)
1988	3.2	4.1	(0.9)	4.1	(0.9)	4.3	(1.1)	4.7	(1.5)	4.6	(1.4)
1989	4.0	4.2	(0.2)	4.2	(0.2)	4.3	(0.3)	4.6	(0.6)	4.6	(0.6)
1990	4.6	3.6	(−1.0)	3.4	(−1.2)	3.7	(−0.9)	3.9	(−0.7)	3.9	(−0.7)
Average	4.2	4.3	(0.1)	4.2	(0.0)	4.7	(0.5)	5.1	(0.9)	4.5	(0.3)
Forecasted (11/90)[2]											
1991	4.1	4.0	(−0.1)	3.8	(−0.3)	4.2	(0.1)	4.4	(0.3)	4.9	(0.8)
1992	3.4	3.7	(0.3)	3.7	(0.3)	4.0	(0.6)	4.4	(1.0)	3.8	(0.4)
Average	3.8	4.0	(0.2)	3.8	(0.0)	4.2	(0.4)	4.4	(0.6)	4.4	(0.6)

[1] The price proxy for the wage and salaries component of the proposed MEI (Average Hourly Earnings) was replaced with alternative proxies to test the MEI for sensitivity.

[2] Price proxies forecasted by DRI/McGraw-Hill, November, 1990.

The current MEI does not include fringe benefit price proxies for either the physicians' time or for nonphysician employees. We propose using the ECI for fringe benefits for total private industry as the price proxy for fringe benefits. This means that both the wage and fringe benefit proxies for physicians' time are derived from the nonfarm private sector and are both computed on a per hour basis. The Commerce Department has an aggregate employer benefits series (employer contributions for social insurance plus employer contributions to private pension and welfare funds), but we do not think this aggregate expenditure series is as appropriate for use in an input price index as the ECI because it is not a per hour computation.

2. Nonphysician Employee Compensation

The current MEI uses average hourly earnings of nonsupervisory workers in finance, insurance, and real estate as the wage proxy for nonphysician employees. The occupational structure of this group may differ significantly from that of nonphysician employees. Consequently, we propose using 1989 Current Population Survey data on earnings and employment by occupation for shares for five occupational groups shown in table 3. BLS maintains an Employment Cost Index (ECI) for each of these occupational groups.

Administrative support, including clerical, was the major occupational group (37 percent). Professional and technical occupations were 28 percent of the total.

These labor cost shares were used as weights for the development of a nonphysician employee wage index. We multiplied each of the occupational cost shares by the changes in the occupational ECI for that category. These values were summed to yield an overall rate of price change. The historical (1984 through 1990) and forecasted (1991 through 1992) annual percent changes for the occupationally blended ECIs are shown in the last line of table 10. Historical and forecasted values of the current MEI proxy and average hourly earnings in physicians' offices are included in table 10 for comparison. The percent changes in average hourly earnings in physicians' offices include the effect of skill mix shifts. These shifts may have been substantial in the last few years as work formerly done in the hospital increasingly is done in mix shifts. These shifts may have been substantial in the last few years as work formerly done in the hospital increasingly is done in ambulatory settings. These skill mix shifts appropriately are held constant in this Laspeyres index of nonphysician employees' wages and salaries. Skill mix shifts that reflect rising intensity of outputs in physicians' offices are automatically paid for by higher charge structures for the more complex mix of service inputs. Physicians performing more complex services hire more skilled employees, and thus tend to charge more for their services.

TABLE 9.—PERCENT DISTRIBUTION OF NON-PHYSICIAN PAYROLL EXPENSE, BY OCCUPATIONAL GROUP: 1989 [1]

Employment cost index occupational group	Expenditure share
Professional and technical workers	27.5
Managers and administrators	19.0
Clerical workers	36.8
Craft and kindred workers	0.5
Service workers	16.2
Total	100.0

[1] These weights were derived from the 1989 Current Population Survey, United States Bureau of the Census.

TABLE 10.—ANNUAL PERCENT CHANGE IN ALTERNATIVE PROXIES OF NON-PHYSICIAN PAYROLL EXPENSE: YEARS ENDING JUNE 30 (NOT FEE SCREEN YEARS), 1984–1992

	Historical							Forecasted*		Average	Average
	1984	1985	1986	1987	1988	1989	1990	1991 [1]	1992	1984–1990	1991–1992
Average hourly earnings, offices of Physicians	4.6	4.5	4.3	3.2	4.3	6.5	8.3	7.2	5.4	5.1	6.3
Current MEI proxy—average hourly earnings, finance, insurance and real estate	5.5	4.3	4.8	4.9	3.6	5.0	4.8	5.1	5.2	4.7	5.1
Proposed MEI proxy—employment cost indexes, wages and salaries, weighted for non-physician occupation mix	5.8	4.7	4.1	3.5	4.0	4.5	4.3	4.7	5.0	4.4	4.9

[1] Price proxies forecasted by DRI/McGraw-Hill, November, 1990.

As previously noted, the current MEI does not include price proxies for fringe benefits. We propose using the ECI for fringe benefits for white collar employees in the private sector. Most nonphysician employees in physicians' offices are white collar employees. We think the ECI for white collar workers is a better price proxy than the U.S. Department of Commerce aggregate expenditure series on employer benefits for purposes of this index because it is computed on a per hour basis.

3. Office Expenses

The CPI–W, which is the price proxy in the current MEI, represents urban wage earners in the economy. This index covers about 32 percent of the total population. The CPI–U, which is a newer index, represents wage earners, professional, managerial, technical workers, and others in the population. The CPI–U covers about 80 percent of the total population. We believe that the CPI–U is a broader, more comprehensive index and therefore is more appropriate as a price proxy than the CPI–W. We use the CPI–W in the current MEI for office expenses and for other professional expenses. We propose to replace the CPI–W with the CPI–U as the price proxy for office expenses and other professional expenses (automobile and other).

Office expenses include rent or mortgage for office space, furnishings, insurance, utilities, and telephone. We propose using the CPI–U for housing as the most appropriate price proxy for office expenses. The CPI for housing is a comprehensive measure of the cost of housing including rent, owner's equivalent rent, insurance, maintenance and repair services, fuels, utilities, telephones, furnishings, and housekeeping services.

4. Medical Materials and Supplies

This cost category includes drugs, outside laboratory work, x-ray films, and other related services. There is no price proxy that includes this mix of materials and supplies. In the absence of one index, we equally weighted three priced proxies associated with the medical materials and supplies listed above. We propose using a blend of three price proxies:

- The producer index for prescription drugs.
- The producer price index for surgical appliances and supplies.

• The CPI for medical equipment and supplies.

5. Professional Liability Insurance

This cost category includes costs for professional medical liability or malpractice insurance premiums, including costs associated with self-insurance. Professional medical liability insurance premiums were the fastest growing expense category in the proposed physician MEI (see tables 5 and 6), though the rate of increase has decreased in the past few years. Changes in the cost of medical liability insurance premiums currently are measured based on a HCFA survey of the rate of change in average liability premiums for $100,000/$300,000 coverage (or the minimum provided) among nine major insurers The causes for these large increases are complex and vary by specialty and geographic location. We propose to continue using the price proxy for professional liability insurance that we use in the current MEI.

6. Medical Equipment

The current MEI does not have a separate cost category for medical equipment. Medical equipment includes depreciation, leases, and rent on medical equipment. We propose using the producer price index for medical instruments and equipment as the price proxy for this category.

7. Other Professional Expenses

This category has two subcomponents: automobile and "other." The automobile category includes depreciation and upkeep for professional cars. We currently use the CPI–W for private transportation for this cost category. This excludes airline fares, inter-city bus and train transportation, and intra-city bus and train transportation.

This category also includes the residual subcategory of other expenses. This residual category includes such professional expenses as accounting services, legal services, office management services, continuing education, professional association memberships, journals, and other professional expenses. In the absence of one price proxy or even a group of price proxies that might reflect this heterogeneous mix of goods and services, we propose using the CPI–U for all items less food and energy.

F. MEI Productivity Adjustments

The general earnings portion (that is, the net income portion) of the current MEI is adjusted to exclude annual changes in economy-wide productivity This is accomplished by dividing the rate of increase in general earnings (average weekly earnings in the private non-farm economy) by an index of the change in output per man-hour of nonfarm business workers. The rationale for this adjustment is that, while increases in general earnings are used to set increases in the physicians' income in the MEI, those increases in general earnings are partly due to changes in workers' productivity. Further, if the portion of the increase in earnings due to productivity increases were not adjusted for productivity, physicians would collect the benefits of productivity increases twice. They would benefit from their own productivity increases plus those generated in the general economy. This double counting for productivity would occur as follows. As noted, economy-wide wage increases reflect, in part, economy-wide productivity changes since productivity increases permit increases in wage rates that are higher than they otherwise would have been. Thus, the use of economy-wide wages as a price proxy without adjustment implicitly would result in payments to physicians that incorporate the value of general economy productivity increases independent of the physicians' own productivity increases. At the same time, under Medicare fee-for-service reimbursement, physicians directly benefit from their own increases in practice productivity. Physicians can increase their income by increasing the number of procedures and services for a given set of inputs or by more efficiently producing the same number of procedures and services by reducing the quantity of inputs. Thus, if the price proxy for physicians' time is not adjusted for productivity, physicians' revenue would be allowed to increase from physicians' productivity gains in addition to economy-wide productivity increases. To avoid this double counting of productivity gains, economy-wide productivity changes are deducted from the rate of increase in general earnings in the current MEI.

The productivity adjustment employed in the current MEI is unstable, since it reflects annual economy-wide fluctuations in productivity. In addition, for years in which productivity in the general economy has declined, the present MEI productivity adjustment has perverse effects. For example, in 1979 earnings increased 8.0 percent, while productivity declined 1.5 percent. Therefore, actual inflation in general earnings was approximately 9.6 percent (1.08/.985=1.096), an amount reflected in the calculation of the MEI.

A revised MEI should incorporate a productivity adjustment that balances the interests of physicians and taxpayers and sends an appropriate signal to encourage productivity increases. We point out that individual physicians' practices that achieve gains in productivity benefit financially, compared to those which do not, regardless of any overall productivity adjustment in the MEI.

Two problematic areas with the current MEI economy-wide adjustment for productivity were discussed above: Instability in the annual percent changes in productivity and the related effect of negative productivity changes resulting in increases in the MEI. Both of these issues can be addressed by using an average rate of productivity change, rather than an annual change.

Given the high instability in annual rates of change in productivity, a more stable measure is needed that—

• Keeps the integrity of the official BLS productivity series;

• Automatically is updated for historical revisions and new experience; and

• Mathematically "averages out" over selected periods of time.

One approach is to use an historical moving average of productivity changes. We experimented with various periods of time to calculate the moving average. We propose using ten years as a balance between being short enough to reflect relatively recent secular trends in productivity while not being overly influenced in any one year be trends in the business cycle. Since labor productivity is calculated by BLS using all direct labor inputs, we propose to apply the productivity adjustment to all direct labor inputs in the MEI, including general earnings (net income) and nonphysician compensation. Each of the four price proxies (average hourly earnings in the private nonfarm economy, ECI for benefits of private nonfarm economy, ECI for wages and salaries of nonphysician employees, ECI for benefits of white collar workers) are divided by a ten-year moving average index of labor productivity in the nonfarm business sector.

IV. Conclusions

In this proposed rule, we have presented options and recommendations for a revised MEI. Comparable to other input price indexes (market baskets) which HCFA uses in connection with provider payment systems, the proposed MEI is a fixed weight Laspeyres measure. The revised index was constructed using expenditure categories developed from 1989 data, the

latest available at the time of this proposal, and has an increased number of cost categories and price proxies. Changes in average hourly earnings for the total private nonfarm economy is employed as a proxy for the wages and salaries component of the physicians' time category. In addition, we developed an occupationally-based wage index as the price proxy for nonphysician employees. We also added separate cost categories for fringe benefits for both physicians and nonphysician employees. For the productivity adjustment, an integral component of the MEI designed to avoid duplicate payment, a more stable ten-year moving average of output per hour in the nonfarm business economy is being used. The labor productivity adjustment is applied to the direct labor components of the MEI, that is, general earnings (net income) and nonphysician employee compensation. We believe the proposed MEI is technically improved and equitably measures price changes for physicians' office practices.

V. Proposed Revisions to the Regulations

We are proposing to amend existing regulations related to the MEI effective for services furnished on or after January 1, 1992. The final determination of methodology, adjustments, and resulting MEI will be published before it takes effect.

We are not proposing to delete from the regulations the language at § 405.502 and § 405.504 that describes the current MEI and its main components, including the example. We would retain these sections and references to the current MEI in the CFR since claims for payment of physicians' services performed in 1991 may be paid during FSY 1992. The references to the current MEI would apply to physicians' services provided before January 1, 1992.

We propose to establish a new § 405.504(d) governing the issuance of the MEI for FSYs after 1991. This section would state that—

- For fee screen years after 1991, the MEI is a physician input price index, which is adjusted by a 10-year moving average index of labor productivity in the nonfarm business sector;
- The MEI is constructed using base year 1989 weights and annual changes in the economic price proxies as shown in table 2, which will appear in the CFR;
- When there is no methodological change, HCFA publishes in the **Federal Register**, as a final notice not subject to public comment, the annual increase in the MEI before the beginning of the fee screen year to which it applies. However, any proposed changes in the base year weights or in the price proxies used to calculate the MEI are published in the **Federal Register** with opportunity for public comment.

VI. Information Collection Requirements

These proposed changes would not impose information collection reqirements; consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VII. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble and, if we proceed with a final rule, we will respond to the comments in the preamble of that rule.

VIII. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, a rule that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or georgraphic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all physicians to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would revise the procedure used to calculate the MEI in order to more accurately reflect year-to-year economic changes affecting the cost of providing physicians' services. The methodology used to determine the MEI has not undergone a major revision since its adoption in 1975. Our analysis indicates that the revised methodology is very close to being budget neutral and any costs or savings associated with this proposed rule from FY 1992 through FY 1996 would be minimal.

Therefore, this final rule does not meet the $100 million criterion nor does it meet the other E.O. 12291 criteria. Since this final rule is not a major rule under E.O. 12291, a regulatory impact analysis is not required.

Section 6102 of Public Law 101–239 amended the Act by adding a new section 1848, which sets forth regulations governing Medicare payment for physicians' services provided after December 31, 1991. Section 1848(d)(3)(A)(ii) defines the appropriate update index that was in effect in 1989 for a category of service. In 1989, physicians' services were subject to the MEI. The allowed percentage increases in the MEI were prescribed by Congress from April 1988 through December 1991.

We believe the revised methodology would have only minimal effects. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act since we have determined and the Secretary certifies that this proposed rule would not result in a significant economic impact on a substantial number of small entities and would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set forth in the preamble, we propose to amend 42 CFR part 405, subpart E as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

1. The authorty citation for subpart E continues to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834(b), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395m(b), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

2. Section 405.502(a)(3) is revised as follows:

§ 405.502 Criteria for determining reasonable charges.

(a) * * *

(3) In the case of physicians' services, the prevailing charges adjusted to reflect economic changes as provided under § 405.504 of this subpart.

* * * * *

3. Section 405.504 is amended by revising paragraphs (a)(3)(i) introductory text and (iii) and adding a new paragraph (d) to read as follows:

§ 405.504 Determining prevailing charges.

(a) *Ranges of charges.*

* * * * *

(3)(i) In the case of physicians' services furnished before January 1, 1992, each prevailing charge in each locality may not exceed the prevailing charge determined for the fiscal year ending June 30, 1973 (without reference to the adjustments made pursuant to the economic stabilization program then in effect), except on the basis of appropriate economic index data which demonstrate that such higher prevailing charge level is justified by:

* * * * *

(iii) When, for any reason, a prevailing charge for a service in a locality has no precise counterpart in the carrier's charge data for calendar year 1971 (the data on which the prevailing charge calculations for fiscal year 1973 were based), the limit on the prevailing charge shall be estimated, on the basis of data and methodology acceptable to the Secretary, to seek to produce the effect intended by the economic tax criterion. The allowance or reduction of an increase in a prevailing charge for any individual medical item or service may affect the allowance or reduction of an increase in the prevailing charges for other items or services where, for example, the limit on the prevailing charge is estimated as explained in the preceding sentence of this section, or where the prevailing charge for more than one item or service are established through the use of a relative value schedule and of dollar conversion factors.

* * * * *

(d) *Computation and issuance of the MEI after 1991.*

(1) For fee screen years after 1991, the MEI is a physician input price index, which is adjusted by a 10-year moving average index of labor productivity in the nonfarm business sector.

(2) The MEI is constructed using base year 1989 weights and annual changes in the economic price proxies as shown on the chart below:

PROPOSED MEDICARE ECONOMIC INDEX EXPENDITURE CATEGORIES, WEIGHTS AND PRICE PROXIES

Expense category	Weights (1989) [1] [2] (percent)	Price proxy
Total	100.0	
1. Physician's Own Time (net income, general earnings)	54.2	
a. Wages and salaries	45.3	Average hourly earnings, total private nonfarm.[3]
b. Fringe Benefits	8.8	Employment Cost Index, benefits, private nonfarm.[3]
2. Practice expenses	45.9	
a. Nonphysician Employee Compensation	16.3	
1. Wages and Salaries	13.8	Employment Cost Index, wages and salaries weighted for occupational mix of nonphysician employees.[3]
2. Fringe Benefits	2.5	Employment Cost Index, benefits, white collar.[3]
b. Office Expenses	10.3	CPI-U Housing.
c. Medical Materials and Supplies	5.3	PPI Ethical drugs, PPI Surgical appliances and supplies, and CPI-U Medical equipment and supplies (equally weighted).
d. Professional Liability Insurance	4.8	HCFA survey, change in average premiums for $100,000/$300,000 professional liability coverage among 9 major insurers.
e. Medical Equipment	2.3	PPI Medical instruments and equipment.
f. Other Professional Expenses	6.9	
1. Automobile	1.4	CPI-U, Private transportation.
2. Other	5.5	CPI-U All items less food and energy.

[1] Sources: Martin L. Gonzalez, ed.: Physician Marketplace Statistics, Fall, 1990. Center for Health Policy Research, Chicago, American Medical Association, 1990; Mark Holoveiko, "Practice Expenses Take the Leap of the Decade," Medical Economics, November 12, 1990; and HCFA, Office of the Actuary, special study.
[2] Due to rounding, weights may not sum to 100.0%.
[3] Net of change in ten-year moving average of output per man-hour to exclude changes in economy-wide labor productivity.

(3) When there is no methodological change, HCFA publishes in the **Federal Register**, as a final notice not subject to public comment, the annual increase in the MEI before the beginning of the fee screen year to which it applies. However, any proposed changes in the base year weights or in the price proxies used to calculate the MEI are published in the **Federal Register** with opportunity for public comment.

Catalog of Federal Domestic Assistance Program No. 93.774, Supplementary Medical Insurance.

Dated: April 18, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: May 31, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-21506 Filed 9-6-91; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3400, 3410, 3420, 3440, 3450, 3460, 3470, 3480

RIN 1004-AB44

[WO-660-4120-02-24 1A]

Coal Management—General; Exploration Licenses; Competitive Leasing; Licenses to Mine; Environment; Coal Management Provisions and Limitations; Management of Leases, Licenses, and Logical Mining Units; and Coal Exploration and Mining Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: The proposed rule that would revise provisions of the operations-related portions of the existing Federal Coal Management Program regulations, specifically those regulations relating to exploration licenses, logical mining units, suspensions, lease management, diligence, and exploration and mining operations on leased Federal coal, was published in the **Federal Register** on July 12, 1991 (56 FR 32002), allowing 60 days for public comment. In response to public request, the comment period is being extended 30 days to October 10, 1991.

DATES: Comments should be submitted by October 10, 1991. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rulemaking.

ADDRESSES: Comments should be sent to Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paul Politzer, (202) 208-7722, or Harold W. Moritz, (202) 208-7722.

Richard Roldan,

Acting Assistant Secretary of the Interior.

[FR Doc. 91-21499 Filed 9-6-91; 8:45 am]

BILLING CODE 4310-84-M

Notices

Federal Register
Vol. 56, No. 174
Monday, September 9, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Expansion of the Breckenridge Ski Area, Arapaho National Forest, Summit County, CO

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent.

Breckenridge Ski Corporation has requested the USDA Forest Service to indefinitely postpone its request for a 2,635 acre expansion of its ski area permit boundary. The Forest Service considers the request for expansion to be withdrawn. The Notice of Intent, published in Vol. 55, No. 208 of the **Federal Register** October 26, 1990 p. 43151 is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Greg Davis, Project Manager, Box 620, Siverthorne, Colorado 80498. 303–498–5400.

Dated: August 28, 1991.

Gerald P. Hart,

Acting Forest Supervisor.

[FR Doc. 91–21454 Filed 9–6–91; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Ecleto Creek Watershed Project; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Ecleto Creek Watershed; DeWitt, Guadalupe, Karnes, and Wilson Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, 101 South Main, Temple, Texas 76501–7682, telephone (817) 774–1214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control and watershed protection. The planned works of improvement include 11 floodwater retarding structures and technical assistance for land treatment.

The Notice of a Finding of a No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: August 26, 1991.

Charles W. Conklin,

Assistant State Conservationist.

[FR Doc. 91–21410 Filed 9–6–91; 8:45 am]

BILLING CODE 3416–16–M

Elm Creek (Cen-Tex) Watershed, TX

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that a supplement to the environmental impact statement is being prepared for the Elm Creek (Cen-Tex) Watershed, Bell, Falls, McLennan, and Milam Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, 101 South Main, Temple, Texas 76501–7682, telephone (817) 774–1214.

SUPPLEMENTARY INFORMATION: The work plan was approved and an environmental impact statement prepared in 1975. Twenty-nine floodwater retarding structures have been installed and 16 remain to be installed. As a result of deleting Site 42 and adding Sites 42A and 42B, which are smaller structures, the project may cause significant local, regional, or national impacts on the environment. Therefore, Harry W. Oneth, State Conservationist, has determined that the preparation and review of a supplement to the environmental impact statement is needed for this project.

The project concerns a plan for watershed protection and flood prevention. Alternatives under consideration to reach these objectives include proceeding with the project as originally planned, stop all future action, and replace Site 42 with Sites 42A and 42B.

A draft supplement to the environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement.

A meeting will be held at 8 p.m., Thursday, November 14, 1991, at 602 South 1st Street, Temple, Texas, to determine the scope of the evaluation of the proposed action. Further information on the proposed action, or the meeting may be obtained from Harry W. Oneth, State Conservationist, at the above address or telephone (817) 774–1214.

Dated: August 26, 1991.

Charles W. Conklin,

Assistant State Conservationist (Administration).

[FR Doc. 91–21491 Filed 9–6–91; 8:45 am]

BILLING CODE 3410–16–M

Pine Creek Watershed, Lamar County, TX; Intent To Prepare a Supplemental Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that a supplemental environmental impact statement is being prepared for the Pine Creek Watershed, Lamar County, Texas.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, 101 South Main, Temple, Texas 76501, telephone (817) 774–1214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of a supplemental environmental impact statement are needed for this project.

The project concerns the completion of an authorized flood prevention and watershed protection project with the addition of a municipal and industrial water supply. Alternatives under consideration to reach these objectives include proceeding with the project as originally planned or redesigning one floodwater retarding structure to include industrial and municipal water supply.

A draft supplemental environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft supplemental environmental impact statement. A public meeting will be held October 1, 1991 from 10 a.m. to 12 noon in the Lamar County Courthouse in Paris, Texas to determine the scope of the evaluation of the proposed action. Further information on the proposed action or the meeting may be obtained from Harry W. Oneth, State Conservationist, at the above address or telephone (817) 774–1214.

Dated: August 26, 1991.

Charles W. Conklin,

Assistant State Conservationist.

[FR Doc. 91–21409 Filed 9–6–91; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will be held from 6 p.m. until 9 p.m. on Thursday, September 26, 1991, at the Omni Northstar Hotel, 618 2nd Avenue, So., Minneapolis St. Paul, Minnesota. The purpose of this meeting is to discuss press and media stereotyping of minorities.

Persons desiring additional information should contact Mary E. Ryland, Committee Chairperson at (218) 727–3673 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353–8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 3, 1991.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–21438 Filed 9–6–91; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Manufacturers' Shipments, Inventories, and Orders (M3).

Form Number(s): M-3 (SD).

Agency Approval Number: 0607–0008.

Type of Request: Revision of a currently approved collection.

Burden: 20,000 hours.

Number of Respondents: 5,000.

Avg Hours Per Response: 20 minutes.

Needs and Uses: The Census Bureau conducts the M3 survey, one of the principal Federal economic indicators, to collect monthly manufacturing data from a sample of firms in the manufacturing sector of the economy. The data are used to analyze short– and long–term trends in the manufacturing sector and as related to other sectors of the economy. The shipments and inventory data are essential inputs into the gross national product accounts, while the orders data are direct inputs into the leading economic indicator series. The survey also provides valuable and timely data for economic planning and analysis to business firms, trade associations, research and consulting agencies, and the academia on the domestic manufacturing sector.

Affected Public: Businesses or other for–profit organizations, Small businesses or organizations.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 3, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–21539 Filed 9–6–91; 8:45 am]

BILLING CODE 3510–07–F

Bureau of Export Administration

Action Affecting Export Privileges; Dominion Oilfields Supply Company, Ltd.

Order

Whereas, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), has notified Dominion Oilfields Supply Company, Limited (hereinafter referred to as Dominion) of its intention to initiate an administrative proceeding against it alleging that Dominion violated the provisions of § 787.3(b) of the Regulations in that, between March 1986 and continuing through about March 1989, Dominion conspired with

Alvin C. Schreiner, Phillip B. Wicker, and others to bring about acts that constituted violations of the Act and the Regulations and that the objective of the alleged conspiracy was to effectuate the export of U.S.-origin industrial, including oil drilling equipment from the United States to Libya, through the United Kingdom, without obtaining from the Department the validated export licenses or reexport authorizations required by § 772.1(b), 774.1, 785.7 and 790.7 of the Regulations;

Whereas, the Department and Dominion have entered into a Consent Agreement whereby they have agreed to settle all matters between them by Dominion's paying to the Department a civil penalty of $10,000 and by the Department's denying Dominion's export privileges for five years (a portion of which is suspended as set forth below);

The terms of the Consent Agreement having been approved by me;

Therefore, it is ordered:

First, a civil penalty in the amount of $10,000 is assessed against Dominion which Dominion shall pay to the Department within 30 days of the date of the entry of this Order. Payment shall be made in the manner specified in the attached instructions.

Second, Dominion Oilfields Supply Company, Limited (hereinafter referred to as Dominion) 7100 North Loop East, suite 7, Houston, Texas 77028, and all its successors, assigns, officers, partners, and any representatives, agents or employees acting on its behalf shall, for a period of five years from the date of entry of this Order, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing for filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

B. After notice and opportunity for comment pursuant to 15 CFR 788.3(c), such denial may be made applicable to any person, firm, corporation, or business organization with which Dominion is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

C. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data subject to the Act and the Regulations, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Dominion or any related person, or whereby Dominion or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any U.S.-origin commodity or technical data exported in whole or in part, or to be exported by, to, or for Dominion or any related person denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

D. As authorized by § 788.16(c) of the Regulations, the denial period herein provided for against Dominion shall be suspended for a period of four years and 10 months beginning two months from the date of entry of this Order and shall thereafter be waived, provided that: (1) Dominion fully cooperates with the reasonable requests of the Department, either on the Department's own behalf or on the behalf of other appropriate agencies of the United States Government, in investigating all facts and circumstances arising from the allegations contained in the proposed Charging Letter, provided that no testimony, statements, documents, or other information provided by Dominion or by any of its present or past officers, directors, employees, agents, or representatives (or any information directly or indirectly derived from such testimony, statements, documents or other information) may be used against Dominion, its affiliates, successors, parents, assigns, and also its past or present agents, representatives, officers, directors, or employees, with the exception of Al Schreiner, Phillip Wicker, and Ted Datchko, in any criminal, civil, or administrative proceeding, except a prosecution for perjury or giving a false statement occurring from such cooperation. The continued suspension of the period of denial is expressly made contingent upon Dominion's ongoing cooperation with such investigations, and with any criminal, judicial or administrative litigation arising therefrom, as the United States Government may choose to pursue. Dominion's failure or refusal to cooperate may result in the revocation of the suspension; and (2) during the period of applicable suspension, Dominion has not committed any violation of the Act or any regulation, order or license issued under the Act.

Third, that the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public. A copy of this Order shall be served on Dominion and published in the **Federal Register**.

This constitutes the final agency action in this matter.

Dated: August 26, 1991.

Kenneth A. Cutshaw,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 91-21413 Filed 9-6-91; 8:45 am]

BILLING CODE 3510-DT-M

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held October 1, 1991, in the Herbert C. Hoover Building, room 1617F, 14th & Pennsylvania Avenue, NW., Washington, DC. The Committee will meet in closed session from 8 a.m. to 10 a.m. The Committee will meet in open session from 10 a.m. to 12 p.m. The Committee will meet again in closed session from 12 p.m. to 5 p.m. The Committee advises the office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to

electronics and related equipment and technology.

Agenda:

Executive Session 8 a.m.–10 a.m.

1. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

General Session 10 a.m.–12 p.m

2. Opening remarks by the Chairman.

3. Presentation of papers or comments by the public.

4. Discussion of COCOM Core List export controls.

Executive Session 12 p.m.–5 p.m.

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting with be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, TAC Staff/BXA/Rm. 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave. NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C., 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, D.C. 20230. For further information or copies of the minutes, contract Lee Ann Carpenter on (202) 377–2583.

Dated: September 3, 1991.

Betty Anne Ferrell,

Director, Technical Advisory Committee Staff.

[FR Doc. 91–21538 Filed 9–6–91; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Export Council is holding a meeting to discuss Council committee work plans and issues relating to foreign market development, U.S. trade competitiveness, export promotion, export financing, and export controls. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. export trade.

DATES: September 24, 1991, from 10 a.m. to 11:45 a.m. and 1:30 p.m. to 3 p.m.

ADDRESSES: Willard Hotel, Ballroom, 1401 Pennsylvania Avenue, NW., Washington, DC 20004. Seating is limited and will be on a first come, first serve basis.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Lino Prosak, President's Export Council, room 3215, Washington, DC 20230.

Dated: September 3, 1991.

Wendy H. Smith,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 91–21479 Filed 9–6–91; 8:45 am]

BILLING CODE 3510-DR-M

University of California, Los Alamos, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket Number: 90–095. *Applicant:* University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. *Instrument:* Low Energy Pion Momentum Compactor. *Manufacturer:* Interatom GmbH, West Germany. *Date of Denial Without Prejudice to Resubmission:* February 26, 1991.

Docket Number: 90–195. *Applicant:* University of Georgia, Athens, GA 30602. *Instrument:* Mass Spectrometer, Model Tracermass. *Manufacturer:* Europa Scientific, United Kingdom. *Date of Denial Without Prejudice to Resubmission:* May 29, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–21540 Filed 9–6–91; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board Meeting

August 29, 1991.

The USAF Scientific Advisory Board Ad Hoc Committee on Science and Technology (S&T) Broad Program Appraisal (BPA) will meet on October 10, 1991, from 8 a.m. to 5 p.m. at The Pentagon, Washington, DC 20330.

The purpose of the meeting is to present the Committee's observations and comments on the Air Force S&T programs to the Air Force Acquisition Executive (AFAE) to assist him in his decisions to approve/disapprove the Technology Area Plans (TAPs) and the Technology Investment Plans (TIPs) submitted for the management of these programs. This meeting will involve discussions of (1) classified defense and (2) contractor proprietary matters listed in section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–21414 Filed 9–6–91; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Patent Licenses, Exclusive and Partially Exclusive; Gutleber, F.S.

AGENCY: U.S. Army Communications-Electronics Command.

ACTION: Notice of prospective exclusive and partially exclusive licenses.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of prospective partially exclusive licenses of the following United States Patent Nos., 4,460,992 and 4,457,007.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anderson, U.S. Army Communications-Electronics Command, ATTN: AMSEL-LG-L, Fort Monmouth, New Jersey 07703-5000, Telephone (908) 532-4112.

SUPPLEMENTARY INFORMATION: The above mentioned United States Patents involve the generation and compression (detection) of spread spectrum multiplexed noise codes and applications of these codes in communications, switching and control systems. Rights to these patents are owned by the United States Government, as represented by the Secretary of the Army. Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of Title 35, United States Code, the Department of the Army, as represented by the Communications-Electronics Command, intends grant exclusive or partially exclusive licenses for the above mentioned United States Patents to the following entities:

Hillier Technologies, a Limited Partnership, 500 Alexander Park, CN23, Princeton, New Jersey 08543-0023; and

Thomas H. Barham Co., Inc., 4239 Highway No. 33, Tinton Falls, New Jersey 07753.

Pursuant to 37 CFR 404.7(a)(1)(i) any interested party may file written objections to these prospective exclusive or partially exclusive license arrangements. Written objections should be directed to: Mr. William H. Anderson, Intellectual Property Law Division, U.S. Army Communications-Electronics Command, ATTN: AMSEL-LG-L, Fort Monmouth, New Jersey 07703-5000.

Written objections must be filed within 60 days from the date of the publication of this notice in the **Federal Register.**

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 91-21567 Filed 9-6-91; 8:45 am]

BILLING CODE 3710-08-M

Patent Licenses, Exclusive and Partially Exclusive: Spread Spectrum Multiplex Noise Codes

AGENCY: U.S. Army Laboratory Command.

ACTION: Notice of availability for non-exclusive, or partially exclusive licensing of U.S. Patents concerning Spread Spectrum Multiplexed Noise Codes.

SUMMARY: In accordance with 37 CFR 404.6 announcement is made of the availability of U.S. Patent Nos. 4,460,992 and 4,457,007 for licensing. These patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

These patents concern spread spectrum multiplexed noise codes and methods to eliminate interference of the same. These codes are formed with mate code pairs which when orthogonally multiplexed, transmitted and detected in a matched filter possess an impulse autocorrelation function, meaning they compress to a single impulse containing no sidelobes. Generally, the noise codes are comprised of binary digital noise codes which compress to a code bit width of tau.

By utilizing these multiplexed noise codes, simplex and duplex wireless data transmission may be accomplished with no interference. Further, these codes may be used in multiple access communication systems wherein each user may be assigned a different unique noise code pair consisting of code mate pairs that are selected from a subset of multiplexed noise codes whose cross-correlation function value is equal to zero at a time when all the code mate pairs compress to a single impulse with no sidelobes. Therefore, several million users may exist in any one local transmission area.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and section 207 of Title 35, United States Code, the Department of the Army as represented by the United States Army, Communications Electronics Command wishes to license the above-mentioned United States Patents in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing and selling devices covered by the above mentioned patents.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Anderson, United States Communications-Electronics Command, ATTN: AMSEL-LG-L, Fort Monmouth, New Jersey 07703-5000, (908) 532-41126.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 91-21566 Filed 9-6-91; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Availability of the Draft Environmental Impact Statement (DEIS) of the Los Angeles County, Drainage Area (LACDA) Review Study, CA

AGENCY: Army Corps of Engineers, Los Angeles District.

ACTION: Notice of availability.

SUMMARY: This Draft EIS has been prepared as part of the LACDA Review Study which is designed to develop a system-wide approach to identifying means for improving the capabilities of the LACDA flood control system. During the 40 years since its construction, the ability of the system to provide a high level of protection has diminished due to an increase in surface runoff, loss of groundwater percolation and associated increases in contributory flow from additional storm drains.

The tentatively selected plan for improving flood protection in the LACDA system, consists of the following: (1) Levee armoring and raising channel walls along the Rio Hondo, the Los Angeles River (LAR) from Atlantic Boulevard to the Ocean, and Compton Creek; and (2) armoring the backside (outside) of the LAR from Atlantic Boulevard to the Pacific Ocean, Rio Hondo (entire) and Compton Creek from Willowbrook to the LAR. These sections would prevent predicted overtopping of the levees that would be expected in the event of catastrophic flooding. The linear distance of the armoring would be about 28 miles. Accessibility to the channel would not be impacted. Raising the channel walls would also include channel transitions to trapezoidal where necessary and extensions of bridge piers where possible. Environmental enhancement, habitat improvement, and mitigation have been considered but will not be included in project features because the project would not modify any habitats.

A range of alternative solutions to reduce the flood threat along the Los Angeles River and the Rio Hondo has been considered by the Corps of Engineers during the initial plan formulation phase of the study. Alternatives considered during the planning process include 2 plans with detention or spreading ground possibilities (that of deepening Tujunga and Pacoima Spreading grounds; and that of using Santa Fe gravel pit as a detention basin). Public scoping meetings were held to obtain agency and community input to assure that all concerns are identified and addressed in the Draft EIS/EIR. The Corps has initiated coordination efforts with appropriate Federal, state and local agencies to resolve potential problems concerning involved biological resources. A public meeting will be held to receive comments regarding the Draft EIS. It will be in the Carson Community Center, Carson, California, on October 1, 1991, at 7 p.m. Comments received during the DEIS public review period will be considered and addressed in the Final EIS. Another public review period will follow distribution of the Final EIS.

FOR FURTHER INFORMATION CONTACT: Concerns about the Draft EIS can be answered by Mr. Ron Ganzfried (CESPL-PD-RN), U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 2711, Los Angeles, California 90053-2325, (213) 894-2314. Comments must be received by October 14, 1991.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 91-21494 Filed 9-6-91; 8:45 am]

BILLING CODE 3710-KF-M

Intent To Prepare a Draft Supplemental Environmental Impact Statement (D-SEIS) for a Proposed Dam and Reservoir on the Rio Portugués in the Municipio of Ponce, Puerto Rico

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers, has prepared a Feature Design Memorandum for the construction of the Portugués Dam and Reservoir. A draft Supplement will be prepared for the project to update the Final EIS (circulated in 1973).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft SEIS can be answered by: Barbara Cintrón, U.S. Army Engineer District, P.O. Box 4970, Jacksonville, Florida 32232-0019; Telephone (904) 791-1692.

SUPPLEMENTARY INFORMATION: The projects for flood control and other purposes on the Portugués and Bucaná Rivers in Ponce, Puerto Rico, were authorized by section 201 of the Flood Control Act of 1970, Public Law 91-611. A Final Environmental Impact Statement for the entire Portugués-Bucaná project was circulated in 1974. The dam and reservoir on Río Portugués constitute the last phase of this project, and, in conjunction with the dam and reservoir on the Río Cerrillos and channel improvements to the Portugués and Bucaná Rivers in Ponce, will provide flood control and water supply to the city of Ponce. The dam will be located about 3 miles northwest of Ponce, and will be built in two phases. The first phase, an interim dam to a height of 219.6 feet, will provide the flood control features of the project. At this stage maximum pool elevation will be 530.9 ft msl, with a maximum surface area of 215 acres. During the second phase the dam will be completed to its designed height of 270.6 feet for water supply purposes. Maximum pool elevation will then be 585.6 feet msl, with a maximum surface area of 320 acres. Four sites will be developed under both options for recreational purposes by the general public.

1. Construction of the dam and reservoir will require some relocations of roads and buildings. Other effects include impacts on known cultural sites, on vegetative cover and wildlife habitats in the dam and pool area, and on fish resources of the Río Portugués and its upstream tributaries.

2. An extensive public involvement program accompanied the formulation of original project plans and circulation of the Draft and Final Environmental Impact Statements for the overall project (during 1973-74). Because of the time elapsed since circulation of the FEIS and subsequent changes in environmental laws and regulations, it is appropriate to review the environmental consequences of the project and update existing information. A letter requesting views and comments was circulated to Commonwealth and Federal agencies and interested parties in August, 1990, announcing the Corps' intent to prepare and circulate a comprehensive environmental document for the dam and reservoir and requesting assistance in identifying significant issues to be addressed.

3. Significant issues identified to date which will be addressed in the SEIS include effects on federally listed threatened and endangered species, if present; effects on upland and instream habitats; effects on forest resources; effects on freshwater fish resources; and effects on cultural and aesthetic resources of the site.

4. Coordination with the U.S. Fish and Wildlife Service will be accomplished in accompliance with section 7 of the U.S. Endangered Species Act. Coordination required by applicable Federal and Commonwealth laws and policies will be conducted.

5. A scoping meeting is not scheduled. The Draft Supplement will be available to the public in October 1991.

Dated: August 21, 1991.

A.J. Salem,

Chief, Planning Division.

[FR Doc. 91-21568 Filed 9-6-91; 8:45 am]

BILLING CODE 3710-AJ-M

Department of the Navy

Planning and Steering Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Planning and Steering Advisory Committee will meet October 7, 1991, from 0900 to 1530, at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss topics relevant to SSBN security. The entire agenda will consist of classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: LT J. E. Williams (OP-213E), Pentagon, room 4D534, Washington, DC 20350, telephone number (703-697-8887).

Dated: August 28, 1991.

Wayne T. Baucino,

Lieutenant, JACC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91-21415 Filed 9-6-91; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF88-296-002, et al.]

Project Orange Associates, L.P., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Project Orange Associates, L.P.

[Docket No. QF88-296-002]

August 28, 1991.

On August 21, 1991, Project Orange Associates, L.P. (Applicant), of 6780 Northern Boulevard, Suite 501, East Syracuse, New York, 13507, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Syracuse, New York, and will consist of two combustion turbine generators and two supplementary fired heat recovery boilers.

The original certification was issued to G.A.S. Orange Development, Inc., on June 29, 1988, (43 FERC ¶ 62,370). The instant recertification is requested due to a change in the configuration, from one to two combustion turbine generators/heat recovery boiler units and a change in the ownership structure.

Comment date: October 9, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Dravo Energy Resources of Montgomery County, Inc.

[Docket No. QF88-142-002]

August 28, 1991.

On August 23, 1991, as supplemented on August 27, 1991, Dravo Energy Resources of Montgomery County, Inc., tendered for filing an amendment to its filing in this docket.

The amendment supplements certain aspects of facility's ownership structure.

Comment date: September 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Public Power Incorporated System V. Mid-Continent Area Power Pool

[Docket No. EL91-51-000]

August 29, 1991.

Take notice that on August 23, 1991, The Wisconsin Public Power Incorporated System (WPPI) tendered for filing a Complaint, Request for Summary Disposition and Alternative Request for Investigation and Hearing against the Mid-Continent Area Power Pool (MAPP). In its Complaint, WPPI asks the Commission to find that WPPI has been improperly denied Participant membership in MAPP and access to MAPP service schedules.

Comment date: September 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

Answers to the complaint shall be due on or before September 30, 1991.

4. Town of Norwood, Massachusetts v. New England Power Company

[Docket No. EL91-53-000

August 29, 1991.

Take notice that on August 23, 1991, the Town of Norwood, Massachusetts (Norwood) tendered for filing a complaint against the New England Power Company (NEPCO). Norwood alleges that NEPCO's existing wholesale-for-resale rates and charges are excessive, unjust, unreasonable, and unlawful and should be reduced by at least $44.9 million.

Comment date: September 30, 1991, in accordance with Standard Paragraph E at the end of this notice.

Answers to complaint shall be due on or before September 30, 1991.

5. Holyoke Water Power Company

[Docket No. ER91-601-000]

August 29, 1991.

Take notice that on August 26, 1991, Holyoke Water Power Company (HWP), tendered for filing a proposed amendment to a service agreement between HWP and Holyoke Power and Electric Company (HP&E), dated October 14, 1957.

HWP states that this amendment eliminates from the contract the buy back from HP&E of output from the Mt. Tom Power Plant in Holyoke, Massachusetts. The amendment does not change any other rates or terms of service.

HWP requests that the Commission waiver its filing requirements to the extent necessary to permit the proposed amendment to become effective as of midnight on June 30, 1991.

HWP states that copies of the appropriate proposed amendment have been served on HP&E.

Comment date: September 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Central Vermont Public Service Corporation

[Docket No. ER91-592-000.

August 29, 1991.

Take notice that on August 16, 1991, Central Vermont Public Service Corporation (CVPS), in accordance with the agreement between itself and the Vermont Electric Generation and Transmission Cooperative, Inc. (VG&T), tendered for filing a revenue comparison of forecast and actual revenue for 1990, a report of forecast costs for 1990 and a report for actual costs for 1990 for transmission service provided by CVPS to VG&T for the output of VG&T's 4.0 MW hydroelectric plant at North Hartland, Vermont.

Comment date: September 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER91-593-000

August 29, 1991.

Take notice that on August 19, 1991, Southern Company Services, Inc. acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as "Southern Companies"), tendered for filing a Notice of Termination of the Short-Term Unit Power Sales Agreement between Florida Power & Light Company and Southern Companies.

Southern Companies state that the termination is effective as of July 11, 1991.

Comment date: September 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

8. EUA Power Corporation

[Docket No. ER90-330-000.

August 29, 1991.

Take notice that on August 12, 1991 EUA Power Corporation (EUA Power) tendered in settlement of all issues in this docket a rate schedule for the sale of short-term post-commercial energy to Montaup Electric Company (Montaup). The rate schedule is the result of settlement discussions with the Attorney General of Massachusetts (the MASS AG) and the FERC Staff in this docket which began in mid-1990. The price for transactions will be the lower of (1) EUA Power's incremental cost plus a contribution to fixed costs not to exceed the fixed-cost "cap" ($.05 per kilowatt-hour) in EUA Power's contracts for sales to non-affiliates. This will always be higher than Option B or C; (2) EUA Power's incremental cost plus 50% of the difference between incremental

cost and Montaup's decremental cost (cost of generation only), or (3) 90% of Montaup's avoided cost (including purchase options).

EUA Power requests that the rate schedule be made effective 60 days from filing, on October 12, 1991, and that this docket be terminated.

Comment date: September 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

9. Central Vermont Public Service Corporation

[Docket No. ER91-584-000

August 29, 1991.

Take notice that Central Vermont Public Service Corporation on August 23, 1991, tendered for filing amendments and supplemental information relating to agreements with Vermont Electric Cooperative, Inc. and Barton Village, Inc. for the sale of Central Vermont system capacity, and a notice of termination for the transactions. Central Vermont states that the agreements were entered into pursuant to negotiations that were completed after service began and requests that the Commission waive its notice requirements to allow the agreements to take effect in accordance with their terms.

Comment date: September 12, 1991, in accordance with Standard Paragraph E at the end of this notice.

10. Gulf Power Company

[Docket No. EL90-40-003]

August 30, 1991.

Take notice that on July 29, 1991, Gulf Power Company tendered for filing a revised calculation of additional amounts refunded to Gulf Power Company's wholesale customers on July 25, 1991 related to the fuel buyout costs recovered prior to July 19, 1990.

Comment date: September 11, 1991, in accordance with Standard Paragraph E at the end of this notice.

11. Arizona Public Service Company

[Docket No. ER91-607-000]

August 30, 1991.

Take notice that on August 23, 1991, Arizona Public Service Company tendered for filing a name change to the Tohono O'odham Utility Authority (TOUA) (formerly the Papago Tribal Utility Authority) Wholesale Power Supply Agreement (FPC Rate Schedule No. 52) and the TOUA Transmission Service Agreement (FERC Rate Schedule No. 161) as well as a revised Exhibit B to the Transmission Agreement (Agreement). Exhibit B lists the contract demands applicable under the Agreement.

No change from the currently effective rate or revenue levels is proposed herein. No new facilities are required to provide this service.

A copy of this filing has been served on TOUA and the Arizona Corporation Commission.

Comment date: September 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

12. Carolina Power & Light Company

[Docket No. ER91-561-000]

August 30, 1991.

Take notice that on August 26, 1991, Carolina Power & Light Company (CP&L) tendered for filing cost support for monthly facilities charges resulting from changes in its agreements with Carteret-Craven Electric Membership Corporation (EMC), French Broad EMC, Jones-Onslow EMC, Lumbee River EMC, Randolph EMC, South River EMC, Wake EMC, and Tideland EMC. This information was requested by the Commission Staff.

Comment date: September 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ER91-606-000]

August 30, 1991.

Take notice that on August 27, 1991, Commonwealth Edison Company (CE) tendered for filing a new Interconnection Agreement, dated August 1, 1991, between CE and Indiana Michigan Power Company (I&M). I&M is an operating subsidiary of American Electric Power, Inc. (AEP) and is a part of the AEP integrated utility system. The new Interconnection Agreement replaces an existing Interconnection Agreement, dated July 20, 1956, between the parties and provides service schedules for the provision of Emergency Service, Economy Energy, AEP System Power and Energy, AEP Delivery of Third Party Purchases, CE General Purpose Energy, CE Short Term Power, and CE Firm Power.

CE requests expedited consideration of the filing and an effective date of August 30, 1991. Accordingly, CE requests waiver of the Commission's notice requirements to the extent necessary.

Copies of this filing were served upon AEP, I&M, the Illinois Commerce Commission, the Indiana Utility Regulatory Commission, and the Michigan Public Service Commission.

Comment date: September 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

14. Southwestern Electric Power Company

[Docket No. ER91-604-000]

August 30, 1991.

Take notice that Southwestern Electric Power Company (SWEPCO), on August 26, 1991, tendered for filing a Restated and Amended Power Supply Agreement (Agreement), dated March 1, 1991, between SWEPCO and Rayburn Country Electric Cooperative, Inc. (Rayburn Country).

This Agreement supersedes and replaces the Power Supply Agreement between SWEPCO and Rayburn Country, dated January 12, 1987, earlier accepted for filing by the Commission.

SWEPCO requests the Agreement be permitted to become effective as of January 1, 1983, and therefore has requested waiver of the Commission's notice requirements.

Copies of the filing were served upon Rayburn Country and the Public Utility Commission of Texas.

Comment date: September 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

15. Arkansas Power & Light Company

[Docket No. ER91-608-000]

August 30, 1991.

Take notice that Arkansas Power & Light Company (AP&L) on August 28, 1991 tendered for filing a proposed new Article 4—Rate Formulas and Billing Determinants of the Hydroelectric Power Transmission and Distribution Service Agreement dated March 31, 1988. This new Article conforms the formulas in this agreement to the formulas in the existing agreements with the Cities of Conway, Osceola and West Memphis, Arkansas. The revision to the formulas will become effective with the next formula rate updated filing in March, 1992.

The proposed formulas in the revised Article 4 will effect a savings for the Customer.

Comment date: September 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

16. Union Electric Company

[Docket No. ER91-597-000]

August 30, 1991.

Take notice that on August 9, 1991, Union Electric Company (UE) tendered for filing a Letter Agreement between UE and Arkansas Power and Light Company (AP&L) extending their Wholesale Electric Service Agreement until May 31, 1992 or until the closing of the purchase by UE of AP&L's Missouri facilities.

Comment date: September 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

17. Pacific Gas and Electric Company

[Docket No. ER91-605-000]

August 30, 1991.

Take notice that on August 27, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing, revised Rate Appendices to the Southern California Cities of Anaheim, Azusa, Banning, and Colton (Cities), Rate Schedule FERC Nos. 102, 103, 104, and 105, respectively. The revisions are for gas rates used as factors in calculating formula energy rates to be effective on August 1, 1991. Additionally, PG&E and the City of Anaheim request termination of Rate Schedule FERC No. 102, effective December 1, 1991. PG&E and the City of Riverside request termination of Rate Schedule FERC No. 106, effective August 1, 1991. PG&E and the Cities of Azusa, Banning, and Colton request termination of Rate Schedule FERC Nos. 103, 104, and 105, effective June 1, 1992.

Copies of this filing have been served upon the Cities and the California Public Utilities Commission.

Comment date: September 13, 1991, in accordance with Standard Paragraph E end of this notice.

18. The Washington Water Power Company

[Docket No. ER91-534-000]

August 30, 1991.

Take notice that on August 28, 1991, The Washington Water Power Company, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 an Amendment 1 to its original filing of a Firm Capacity and Energy Sales Agreement between The Washington Water Power Company and Sierra Pacific Power Company. This Amendment 1 revises contract pricing language and provides additional information requested by Commission staff.

A copy of the filing was served upon Sierra Pacific Power Company.

Comment date: September 13, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21458 Filed 9-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2887-000, et al.]

Florida Gas Transmission Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Companv

[Docket No. CP91-2887-000]

August 29, 1991

Take notice that Florida Gas Transmission Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP89-555-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: October 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day average day annual MMBtu	Receipt [1] points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-2887-000 (8-26-91)	City of Vero Beach	(2)	OTX, OLA, TX, LA, MS, AL, FL.	FL	7-1-91, PTS-1, Interruptible.	ST91-9513, 7-1-91. ST91-9894, 8-1-91.
CP91-2888-000 (8-26-91)	City of Vero Beach	(3)	TX	FL	7-1-91, FTS-1, Firm.	ST91-9514, 7-1-91. ST91-9893, 8-1-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

[2]

	First conversion year (effective 7/1/91)		Second conversion year (effective 8/1/91)	
	Phase I	Phase II	Phase I	Phase II
Peak Day	786	466	1,178	700
Average Day	590	350	884	525
Annual Basis	286,734	170,255	430,101	255,383

	First conversion year (effective 7/1/91)		Second conversion year (effective 8/1/91)	
	Phase I	Phase II	Phase I	Phase II
Peak Day	2,103	2,103	2,835	3,113
Average Day	1,269	1,269	1,054	2,355
Annual Basis	463,112	463,112	684,763	859,512

2. Trunkline Gas Company

August 29, 1991

[Docket Nos. CP91-2893-000, CP91-2894-000, CP91-2895-000, CP91-2896-000, CP91-2897-000]

Take notice that on August 26, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Trunkline and is summarized in the attached appendix.

Comment date: October 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date.
CP91-2893-000 (8-26-91)	Reliance Gas Marketing Company (Marketer).	30,000 30,000 10,950,000	Offshore: LA, TX, IL, TN	LA	PT, Interruptible	ST91-9772-000 6-30-91.
CP91-2894-000 (8-26-91)	Phillips Petroleum Company (Producer).	15,000 15,000 5,475,000	Offshore: LA, TX, IL, TN	LA	PT, Interruptible	ST91-9665-000 6-29-91.
CP91-2895-000 (8-26-91)	Anchor Glass Container Corporation (End-user).	4,500 4,500 1,642,500	Offshore: LA, TX, TN, IL	IL	PT, Interruptible	ST91-9663-000 6-29-91.
CP91-2896-000 (8-26-91)	Reliance Gas Marketing Company (Marketer).	30,000 30,000 10,950,000	Offshore: LA, TX, IL, TN	LA	PT, Interruptible	ST91-9653-000 6-30-91.
CP91-2897-000 (8-26-91)	PSI, Inc. (Marketer)	20,000 20,000 7,300,000	Offshore: LA, TX, IL	IN	Interruptible	ST91-9651-000 6-29-91.

3. ANR Pipeline Company

[Docket No. CP91-2892-000]

August 29, 1991.

Take notice that on August 26, 1991, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP91-2892-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for El Paso Natural Gas Company (El Paso) performed pursuant to certificate authorization issued by the Commission on December 9, 1981, in Docket No. CP82-20-000, all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR proposes to abandon a firm transportation service rendered for El Paso under a transportation agreement dated August 21, 1981, designated as Rate Schedule X-126 under Original Volume No. 2 of ANR's FERC Gas Tariff. ANR states that the agreement provides for ANR to take receipt of up to 13,600 Mcf of natural gas per day in High Island Area Block A-341, offshore Texas, and redeliver equivalent volumes at an interconnection with the facilities of the High Island Offshore System in High island Area Block A-340, offshore Texas. ANR advises that service under Rate Schedule X-126 was to extend for an initial term of ten years and year to year thereafter unless canceled by either ANR or El Paso by at least one year's written notice which may be made at the end of the initial ten-year term, or any subsequent year thereafter. It is stated that on November 9, 1990, El Paso notified ANR that it no longer required the service and that it wished to terminate the agreement.

ANR requests that the abandonment authorization become effective on December 10, 1991, the end of the initial ten-year term. ANR states that no facilities are proposed to be abandoned.

Comment date: September 19, 1991, in accordance with Standard Paragraph F at the end of the notice.

4. Florida Gas Transmission Company

[Docket No. CP91-2837-000]

August 29, 1991.

Take notice that on August 21, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP91-2837-000, a request under the prior notice procedures of §§ 157.205, 157.212, and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to add a delivery point to an existing preferred transportation service pursuant to which FGT is transporting natural gas for The City of Lakeland (Lakeland) under FGT's blanket certificate in Docket No. CP89-555-000 issued by the Commission on

June 15, 1990, in Docket Nos. RP89-50, *et al*, all as more fully described in the request which is on file with the Commission and open to public inspection.

FGT proposes to add the new McIntosh Power Plant delivery point in Polk County, Florida, to its existing preferred transportation service for Lakeland under FGT's FERC Rate Schedule PTS-1. FGT states that natural gas deliveries at the new McIntosh Power Plant delivery point would be within the currently authorized maximum annual transportation quantity. FGT also states that the Commission Order issued February 6, 1991, in Docket No. RP91-9-000, granted it a limit waiver of the Commission's first-come, first-served policy and FGT's tariff, as necessary, to permit Lakeland to retain its existing place in FGT's first-come, first-served queue while adding the McIntosh Power Plant delivery point to the preferred transportation service.

Comment date: October 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP91-2883-000]

August 29, 1991.

Take notice that on August 23, 1991, Arkla Energy Resources, a division of Arkla, Inc. (Arkla) 525 Milam Street, Shreveport, Louisiana 71151, filed in Docket No. CP91-2833-000 a request pursuant to §§ 157.205, 157.211, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate certain facilities in Arkansas and Texas under its blanket certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Arkla states that it proposes to operate three existing taps for delivery of gas for resale to consumers other than the right-of-way grantors for whom the taps were originally installed, to upgrade one exiting meter station for increased deliveries to Georgia Pacific, an end-user, and to abandon and transfer to Arkansas Louisiana Gas Company (ALG) certain facilities within the city of Ruston, Louisiana for the delivery of gas to ALG for resale to domestic, commercial and industrial consumers in Arkansas, Louisiana and Texas. Arkla further states that the gas will be delivered from its general system supply, which it states is adequate to provide the service.

Comment date: October 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

6. Panhandle Eastern Pipe Line Company

[Docket Nos. CP91-2908-000, CP91-2909-000, CP91-2910-000]

August 30, 1991.

Take notice that on August 28, 1991, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Panhandle and is summarized in the attached appendix.

Comment date: October 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2908-000 (8-28-91)	City of Shelbina, Missouri (LDC).	1,000 1,000 365,000	Various [1]	MO	4-1-89, SCT, Firm	ST91-9752-000, 7-1-91.
CP91-2909-000 (8-28-91)	American Central Gas Marketing Company (Marketer).	50,000 50,000 18,250,000	Various	IL	6-21-91, PT, Interruptible	ST91-9843-000, 7-1-91.
CP91-2910-000 (8-28-91)	Bishop Pipeline Corporation (Intrastate Pipeline).	20,000 20,000 7,300,000	Various	MI	6-21-91, PT, Interruptible	ST91-9838-000, 7-1-91.

[1] The firm point of receipt is Panhandle's Haven Pool, Reno County, Kansas. Additionally, gas would be received on an interruptible basis from the interruptible points of receipt as listed in Exhibit A of the transportation agreement.

7. Florida Gas Transmission Company

[Docket No. CP91-2839-000]

August 30, 1991.

Take notice that on August 21, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in docket No. CP91-2839-000, a request under the prior notice procedures of §§ 157.205, 57.212, and 284.223 of the Commisison's Regulations under the Natural Gas Act for authorization to add a delivery point to an existing firm transportation service pursuant to which FGT is transporting natural gas for The City of Lakeland (Lakeland) under FGT's blanket certificate in Docket No. CP89-555-000 is issued by the Commission on June 15, 1990, in Docket Nos. RP89-50, *et al*, all as more fully described in the request which is on file with the Commission and open to public inspection.

FGT proposes to add the new McIntosh Power Plant delivery point in Polk County, Florida, to its existing firm transportation service for Lakeland under FGT's FERC Rate Schedule FTS-1. FGT states that natural gas deliveries at the new McIntosh Power Plant delivery point would be within the currently authorized maximum annual and daily transportation quantities. FGT also states that the Commission Order issued February 6, 1991, in Docket No. RP91-9-000, granted it a limit waiver of the Commission's first-come, first-served policy and FGT's tariff, as necessary, to

permit Lakeland to retain its existing place in FGT's first-come, first-served firm service queue while adding the McIntosh Power Plant delivery point to the firm transportation service.

Comment date: October 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

8. Transcontinental Gas Pipe Line Corporation and Transwestern Pipeline Company

[Docket Nos. CP91-2903-000 and CP91-2905-000]

August 30, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, and Transwestern Pipeline Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to Sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP88-328-000 and Docket No. CP88-133-000, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

[4] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of trnasportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: October 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2903-000 (8-27-91)	Superior Natural Gas Corp. (Marketer).	50,000 50,000 [1] 18,250,000	Various	TX	4-22-91, IT, Interruptible.	ST91-9736-000, 7-10-91.
CP91-2905-000 (8-28-91)	Maxus Exploration Company (Producer).	100,000 75,000 36,500,000	AZ, NM, OK, TX	AZ, NM, OK, TX	7-31-91, ITS-1, Interruptible.	ST91-10073-000, 8-1-91.

[1] Transco's quantities are in dekatherms.

9. Panhandle Eastern Pipe Line Company

[Docket Nos. CP91-2911-000 and CP91-2912-000]

August 30, 1991.

Take notice that Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251-1642, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation, service, the appropriate transportation. rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: October 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dt	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2911-000 (8-28-91)	Texaco Gas Marketing (Marketer).	100,000 100,000 36,500,000	Various	IN	PT, Interruptible	ST91-9667, 7-1-91.
CP91-2912-000 (8-28-91)	Stellar Gas Company (Marketer).	50,000 50,000 18,250,000	Various	KS	PT, Interruptible	ST91-9669, 7-1-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

10. Trunkline Gas Company

[Docket Nos. CP91-2898-000, CP91-2899-000, CP91-2900-000]

Take notice that on August 26, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction, including the identity of the

[6] These prior notice requests are not consolidated.

shipper, the type of transportation, service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Trunkline and is summarized in the attached appendix.

Comment date: October 15, 1991, in accordance with Standard Paragraph G at the end of this notice

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2898-000 (8-26-91)	Phillips Petroleum Company (Producer).	15,000 15,000 5,475,000	Off, LA, TX, IL, LA, TN, Off TX.	LA	12-26-89, PT, Interruptible.	ST91-9650-000, 6-29-91
CP91-2899-000 (8-26-91)	Reliance Gas Marketing Company (Marketer).	30,000 30,000 10,950,000	LA, IL, TN, TX, Off LA, Off TX.	LA	7-26-89, PT, Interruptible.	ST91-9654-000, 6-30-91.
CP91-2900-000 (8-26-91)	PSI, Inc. (Marketer)	50,000 25,000 9,125,000	Off LA, Off TX, TN, TX, IL, LA.	IN	11-3-89, PT, Interruptible.	ST91-9658-000, 6-29-91.

11. Tennessee Gas Pipeline Company

[Docket No. CP91-2901-000]

August 30, 1991.

Take notice that on August 27, 1991, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-2901-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for M & B Industrial Gas Development Corporation (M & B), a marketer of natural gas, and for authorization, prior to commencement of the transportation service, to operate a jurisdictional delivery point installed under Natural Gas Policy Act section 311 authorization, and to expand the capacity of this facility in order to effectuate the deliveries of natural gas, under the blanket certificates issued in Docket Nos. CP82-413-000 and CP87-115-000, both pursuant to Section 7 of the Natural Gas act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that, pursuant to an agreement dated August 20, 1991, under its Rate Schedule IT, it proposes to transport up to 40,000 dt equivalent of natural gas on a peak day. Tennessee indicates that it would transport 40,000 dt equivalent on an average day and 14,600,000 dt equivalent annually. Tennessee further indicates that the gas would be transported from Alabama and Mississippi, and would be redelivered in Ohio.

It is stated that the delivery point was installed for a previous transportation service for Southeastern Natural Gas Company (Southeastern), an affiliate of M & B, which commenced in December 1988. It is explained that Southeastern owns the meter station and interconnecting pipeline and that Tennessee proposes herein to install a hot tap to increase the capacity of the meter station to accommodate deliveries to M & B. Tennessee also proposes to operate the meter station as a jurisdictional facility. It is estimated that the proposed modifications would cost $33,000, and it is stated that Tennessee will be reimbursed for this cost by Southeastern.

Comment date: October 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

12. United Gas Pipe Line Company

Docket Nos. CP91-2878-000, CP91-2879-000, CP91-2880-000, CP91-2881-000, CP91-2882-000

August 30, 1991.

Take notice that on August 23, 1991, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in the above-referenced dockets prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[7]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by United and is summarized in the attached appendix.

Comment date: October 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

[7] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2878-000 (8-23-91)	Seagull Marketing Services, Inc. (marketer).	515,000 515,000 187,975,000	MS, LA, OLA, TX, AL	LA, TX, MS, FL, AL	10-1-88 [2] ITS, interruptible.	ST91-9952-000, 7-31-91.
CP91-2879-000 (8-23-91)	Oneok Products Co. (marketer).	46,350 46,350 16,917,750	TX	TX	6-18-91, ITS interruptible.	ST91-9810-000, 7-11-91.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2880-000 (8-23-91)	Shell Gas Trading Company (marketer).	30,900 30,900 11,278,500	LA, OLA, TX	MS	3-14-91, ITS, interruptible.	ST91-9884-000, 7-20-91.
CP91-2881-000 (8-23-91) [4]	Vesta Energy Company (marketer).	103,000 103,000 37,595,000	LA, TX	LA, MS, FL	9-22-89, [3] ITS interruptible.	ST91-9953-000, 8-1-91.
CP91-2882-000 (8-23-91)	Laser Marketing Company (marketer).	618,000 618,000 225,570,000	Various	Various	10-1-88, [3] ITS interruptible.	ST91-9960-000, 7-23-91.

[1] Offshore Louisiana is shown as OLA.
[2] As amended.
[3] As amended.
[4] As supplemented on August 29, 1991.
[5] As amended.

13. Panhandle Eastern Pipe Line Company

[Docket No. CP91-2813-000]

August 30, 1991.

Take notice that on April 19, 1991, Panhandle Eastern Pipe Line Company (Panhandle), jointly referred to as Applicants and Trunkline Gas Company (Trunkline) both of P.O. Box 1642, Houston, Texas 77251-1642 Salt Lake City, filed in Docket No. CP91-2813-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a Transportation service for transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants states that they it propose to abandon the transportation service performed for Transco under Panhandle's Rate Schedule T-51, and Trunkline's Rate Schedule T-75 to be effective July 6, 1991. On April 3, 1991 Applicants give written notice of their intent to terminate the Agreement.

No facilities are proposed to be abandoned herein.

Comment date: September 20, 1991, in accordance with Standard Paragraph F at the end of this notice.

14. Florida Gas Transmission Company

[Docket No. CP91-2875-000]

August 30, 1991.

Take notice that on August 23, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP91-2875-000, a request under the prior notice procedures of Sections 157.205, 157.212, and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to add a delivery point to an existing interruptible transportation service pursuant to which FGT is transporting natural gas for The City of Lakeland (Lakeland) under FGT's blanket certificate in Docket No. CP89-555-000 issued by the Commission on June 15, 1990, in Docket Nos. RP89-50, *et al.*, all as more fully described in the request which is on file with the Commission and open to public inspection.

FGT proposes to add the new McIntosh Power Plant delivery point in Polk County, Florida, to its existing interruptible transportation service for Lakeland under FGT's FERC Rate Schedule ITS-1. FGT states that natural gas deliveries at the new McIntosh Power Plant delivery point would be within the currently authorized maximum daily transportation quantity. FGT also states that the Commission Order issued February 6, 1991, in Docket No. RP91-9-000, granted it a limit waiver of the Commission's first-come, first-served policy and FGT's tariff, as necessary, to permit Lakeland to retain its existing place in FGT's first-come, first-served queue while adding the McIntosh Power Plant delivery point to the interruptible transportation service agreement.

Comment date: October 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as a application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-21459 Filed 9-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 3, 1991.

Take notice that Columbia Gas Transmission Corporation (Columbia) on August 30, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1991:

Second Revised Sheet No. 26.1
Second Revised Sheet No. 26A.1
Third Revised Tenth Revised Sheet No. 26C
Third Revised First Revised Sheet No. 26D
Third Revised Sheet No. 171

Columbia states that the listed tariff sheets set forth the adjustment to its sales and transportation rates applicable to the Annual Charge Adjustment, pursuant to the Commission's Regulations as set forth in Order No. 472, *et seq.*

Columbia Gas states that copies of the filing were served on Columbia Gas' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-21460 Filed 9-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-70-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

September 3, 1991.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on August 30, 1991, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective October 1, 1991:

First Revised Fourth Revised Sheet No. 021
First Revised Substitute Second Revised Sheet No. 022
Second Revised Sheet No. 046

Columbia Gulf states that the listed tariff sheets set forth the adjustment to its sales and transportation rates applicable to the Annual Charge Adjustment, pursuant to the Commission's regulations as set forth in Order No. 472, *et seq.*

Columbia Gulf states that copies of the filing were served on Columbia Gulf's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-21461 Filed 9-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 30, 1991.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on August 28, 1991 certain revised tariff to First Revised Volume No. 1 of its FERC Gas Tariff. The proposed effective date of the tariff sheets is October 1, 1991.

ESNG states that the purpose of the instant filing is to reflect an increase of $0.0005 per dt in the Annual Charge Adjustment (ACA) Charge in the commodity portion of ESNG's sales and transportation rates. Pursuant to Order 472, the Commission has assessed ESNG its annual ACA charge based on $0.0024/Mcf for the annual period commencing October 1, 1991. In accordance with Section 25 of the General Terms and Conditions of ESNG's First Revised Volume No. 1 Tariff, ESNG's proposed tariff sheets track the Commission approved ACA unit rate of $0.0024/Mcf ($0.0023/dt on ESNG's system) commencing October 1, 1991.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-21462 Filed 9-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

August 30, 1991.

Take notice that Equitrans, Inc. (Equitrans), on August 29, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 3, to become effective October 1, 1991.

Original Volume No. 1

Twenty-Ninth Revised Sheet No. 10
Ninth Revised Sheet No. 23

Original Volume No. 3

Ninth Revised Sheet No. 4
Ninth Revised Sheet No. 8

As alternative tariff sheet, Equitrans submits the following to be effective October 1, 1991:

Alternate Twenty-Ninth Revised Sheet No. 10

Pursuant to Order No. 472, the Commission has authorized pipeline companies to track and pass through to their customers their annual charges under an Annual Charge Adjustment (ACA) clause. The 1991 ACA unit surcharge approved by the Commission is $.0024 per Mcf. Equitrans has converted this Mcf rate to a dekatherm (Dth) rate of $.0023 per Dth.

Equitrans states that the rates in this filing are based on Equitran's Annual Purchased Gas Adjustment (PGA) filing in Docket Nos. TA91-1-24-002 and TA91-1-24-003 where Equitrans filed

primary sheets to reflect "as-billed" recovery of producer purchased gas costs and alternative sheets to reflect reclassification of producer demand payments back to the commodity component of the sales rate.

Pursuant to § 154.51 of the Commission's Regulation, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective October 1, 1991.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-21463 Filed 9-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-12-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

September 3, 1991.

Take notice that on August 27, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581 filed the tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1, proposing changes in rates:

Third Revised Sheet No. 24A
Second Revised Sheet No. 149

Granite State proposes an effective date of September 27, 1991 for the above listed tariff sheets.

Granite State states that its filing flows through to its customers revised take-or-pay buydown and buyout costs that will be directly billed to Granite State by Algonquin Gas Transmission Company (Algonquin). According to Granite State, Algonquin filed revised tariff sheets on July 31, 1991, in Docket No. TM91-12-20-000 to passthrough to Granite State its share of take-or-pay costs allocated to Algonquin by its upstream suppliers, CNG Transmission Corporation and National Fuel Gas Corporation. Granite State further states that it has previously established in Docket No. RP91-122-000 the tariff procedures for flowing through the Algonquin take-or-pay costs in compliance with Order No. 528-A and the procedure for allocating the Algonquin directly billed costs are consistent with its approved tariff procedures.

According to Granite State, the take-or-pay costs in its filing will be billed to its jurisdictional customers, Bay State Gas Company and Northern Utilities, Inc., and to a direct sales customer, Pease Air Force Base. Granite State further states that copies of its filing were served on its customers and the regulatory commissions of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-21464 Filed 9-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-65-000]

Jupiter Energy Corp.; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1991.

Take notice that Jupiter Energy Corporation ("Jupiter Energy" or the "Company") on August 30, 1990 tendered for filing the following sheets of its FERC Gas Tariff, Original Volume No. 1:

Fifth Revised Sheet No. 4A
Fifth Revised Sheet No. 5A
Fifth Revised Sheet No. 6A

Jupiter Energy states that the filed tariff sheets reflect revision, pursuant to § 154.38(d)(6) of the Commission's regulations, of Jupiter Energy's Annual Charge Adjustment surcharge to recover during the Commission's upcoming fiscal year the $19,738 Jupiter Energy payment of the Commission's annual charges billing. The new ACA surcharge rate is 0.24¢ per Mcf.

Jupiter Energy proposes an effective date of October 1, 1991.

Jupiter Energy States that copies of the filing have been served on the Company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Jupiter Energy's filing are on file with the Commisison and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-21465 Filed 9-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-53-000]

K N Energy, Inc.; Tariff Filing

September 3, 1991.

On August 30, 1991, K N Energy, Inc. ("K N") tendered for filing the following revised tariff sheets:

Fourth Revised Volume No. 1

Fourth Revised Sheet No. 4
Fourth Revised Sheet No. 4B

First Revised Volume No. 1-A

First Revised Sheet No. 4

K N states that these tariff sheets reflect the Commission's revised Annual Charge Adjustment (ACA) unit charge and requests that the tariff sheets be made effective on October 1, 1991.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such motions or protests should be filed on or before September 10, 1991. Protests will be considered by

the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-21467 Filed 9-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-46-000]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

September 3, 1991.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on August 29, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) Fifth Revised Sheet No. 45 to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective October 1, 1991.

Kentucky West states the revised tariff sheet amends its Annual Charge Adjustment (ACA) charge to place in effect the new ACA funding unit of $.0024 per MCF which represents an increase of $.0005 per MCF.

Kentucky West states that a copy of its filing has been served upon each of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-21466 Filed 9-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-100-000]

Nora Transmission Co.; Proposed Change in FERC Gas Tariff

September 3, 1991.

Take notice that Nora Transmission Company (Nora) on August 29, 1991, tendered for filing with the Federal Energy Regulatory Commission (Commission) First Revised Sheet No. 5 to its FERC Gas Tariff, Original Volume No. 2, to become effective October 1, 1991.

Nora states the revised tariff sheet amends its Annual Charge Adjustment (ACA) charge to place in effect the new ACA funding unit of $.0024 per MCF which represents an increase of $.0005 per MCF.

Nora states that a copy of its filing has been served upon each of its jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-21468 Filed 9-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-27-000]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

September 3, 1991.

Take notice that North Penn Gas Company (North Penn) on August 30, 1991 tendered for filing Eighth Revised Sheet No. 3A to its FERC Gas Tariff First Revised Volume No. 1.

North Penn states that the filed tariff sheet reflects revision pursuant to § 154.38(d)(6) of the Commission's regulations, of North Penn's Annual Charge Adjustment (ACA) surcharge to recover the Commission's annual charges billing. The new ACA surcharge rate is $0.0024 per Mcf.

North Penn proposes an effective date of October 1, 1991.

North Penn states that copies of the filing have been served on the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91[21469 Filed 9-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-86-000]

Pacific Gas Transmission Co.; Annual Charge Adjustment

August 30, 1991.

Take notice that on August 29, 1991, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance certain tariff sheets to be included in its Second Revised Volume No. 1 and Original Volume No. 1-A of its FERC Gas Tariff.

PGT states that the above tariff sheets have been revised to reflect a modification to the Annual Charge Adjustment fee, in accordance with the Commission's most recent Annual Charge billing to PGT.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-21470 Filed 9-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-1-41-000]

Paiute Pipeline Co.; Change in Annual Charge Adjustment

August 30, 1991.

Take notice that on August 29, 1991, Paiute Pipeline Company (Paiute) tendered for filing and acceptance the following tariff sheet to be a part of its FERC Gas Tariff:

First Revised Volume No. 1-A

1st Revised Original Sheet No. 10.

Paiute states that the purpose of said filing is to revise its annul charge adjustment surcharge in order to recover the Commission's annual charges for the 1991 fiscal year.

Paiute has requested that the Commission accept its tariff sheet to become effective on October 1, 1991.

Paiute states that copies of this filing have been mailed to all jurisdictional sales customers and affected state regulatory commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 9, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-21471 Filed 9-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-1-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 3, 1991.

Take notice that on August 30, 1991, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1, and FERC Gas Tariff, First Revised Volume No. 2-A:

FERC Gas Tariff, Original Volume No. 1

Forty-second Revised Sheet No. 10
Forty-second Revised Sheet No. 10A
Twenty-third Revised Sheet No. 11
Thirteenth Revised Sheet No. 11A
Thirteenth Revised Sheet No. 11B

FERC Gas Tariff, First Revised Volume No. 2-A

Second Revised Sheet No. 10A
First Revised Sheet No. 10C
Second Revised Sheet No. 11

The revised tariff sheets are being filed pursuant to Section 25 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, Original Volume No. 1, and Section 21 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 2-A, which affords Texas Gas the right to recover the costs billed to Texas Gas by the Federal Energy Regulatory Commission via the FERC ACA Unit Charge method. That unit charge, as determined by the Commission, is $.0024/Mcf ($.0023/MMBtu converted), as set forth on Texas Gas's Annual Charges Bill for fiscal year 1991, to be effective October 1, 1991.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-21472 Filed 9-6-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-194-013, CP89-7-016 and RP87-7-074]

Transcontinental Gas Pipe Line Corporation; Proposed Changes in FERC Gas Tariff

September 3, 1991.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on August 26, 1991, certain revised tariff sheets to Second Revised Volume No. 1 and Third Revised Volume No. 1 of its FERC Gas Tariff included in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is to (1) revise the rates under Transco's Rate Schedule SS-2 to reflect a change in the Transco and National Fuel Gas Supply Corporation (National Fuel) components of the rate pursuant to the Commission's June 21, 1991 Order on Rehearing in Docket Nos. CP88-194-003 and CP89-7-003 and (2) revise the rates under Transco's Rate Schedule SS-1 pursuant to the provisions of Article X of the Stipulation and Agreement in Transco's Docket No. RP87-7-000 et al. which was approved by the Commission on June 19, 1991.

Included in the Transmittal Letter and Appendices B and C attached to the filing are explanations of the rate changes, the effective dates of such changes and computations of the revised SS-1 and SS-2 rates.

Also included therein for filing are revised tariff sheets which incorporate the Rate Schedule SS-1 and SS-2 rate changes proposed therein into subsequent intervening rate filings which have been accepted or are currently pending Commission acceptance on the effective dates reflected thereon.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 10, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are

on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 91-21473 Filed 9-6-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Civilian Radioactive Waste Management

Availability of Draft Mission Plan Amendment for the Office of Civilian Radioactive Waste Management for Review and Comment

AGENCY: Department of Energy.

ACTION: Notice of document availability and public comment period.

SUMMARY: The Draft Mission Plan Amendment of the Office of Civilian Radioactive Waste Management has been published and is available for comment.

DATES: Comments from all interested parties on the Draft Mission Plan must be received on or before November 8, 1991, to assure consideration.

ADDRESSES: Persons wishing to review the Draft Mission Plan Amendment may obtain a copy by contacting the Director of the Office of Strategic Planning and International Programs, Office of Civilian Radioactive Waste Managment, U.S. Department of Energy, RW-4, 1000 Independence Avenue, SW., Washington DC 20585. Written comments and materials should be addressed to Mr. Isaacs at the above mentioned address. Comments and materials received are available for public inspection in the Department of Energy's Reading Room at the above mentioned address.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas H. Isaacs at the above address (telephone 202-586-5722 or FTS 896-5722).

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 01/07/83 (Pub. L. 97-425), section 301(a) & (b) (for the Mission Plan only), requires the Secretary to prepare a comprehensive report which provides a sufficient basis to permit informed decisions to be made in carrying out a waste-management program based principally on the development of repositories for the disposal of high-level radioactive waste and spent nuclear fuel. While there is no statutory requirement for amendments, the original Mission Plan and its first amendment should be updated to reflect Department plans to implement the Nuclear Waste Policy Amendments Act of 1987. The original Mission Plan was issued on 06/15/85. The first amendment was issued on 06/09/87.

John W. Bartlett,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 91-21531 Filed 9-6-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Application for Interim Waiver and Petition for Waiver of Furnace Test Procedures From The Ducane Company, Inc. (Case No. F-036)

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to The Ducane Company, Inc. (Ducane) from the existing Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the company's FPAA series of gas furnaces.

Today's notice also publishes a "Petition for Waiver" from Ducane. Ducane's Petition for Waiver requests DOE to grant relief from the DOE test procedures relating to the blower time delay specification. Ducane seeks to test using a blower delay time of 30 seconds for its FPAA series of gas furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than October 9, 1991.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-036, Mail Stop CE-90, Room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-3012.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, Subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days

or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On July 1, 1991, Ducane filed an Application for an Interim Waiver regarding blower time delay. Ducane's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Ducane requests the allowance to test using a 30-second blower time delay when testing its FPAA series of gas furnaces. Ducane states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 1.0 percent. Since current DOE test procedures do not address this variable blower time delay, Ducane asks that the interim waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 55 FR 37521, September 12, 1990; Trane Company, 54 FR 19226, May 4, 1989, and 55 FR 41589, October 12, 1990; Lennox Industries, 54 FR 50525, December 7, 1989; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; Inter-City Products Corporation, 55 FR 31099, July 31, 1990, and 56 FR 27959, June 18, 1991; Amana Refrigeration Inc., 56 FR 853, January 9, 1991, and 56 FR 29957, July 1, 1991; Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991, and 56 FR 34200, July 26, 1991; Snyder General Corporation, 56 FR 14511, April 10, 1991; Goodman Manufacturing Corporation, 56 FR 20421, May 3, 1991; and Thermo Products, Inc., 56 FR 32205, July 15, 1991. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Ducane an Interim Waiver for its FPAA series of gas furnaces.

Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver to the Ducane Company, Inc. was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, August 28, 1991.

Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Department of Energy

Washington, DC 20585

August 28, 1991.

Mr. Charles W. Adams,
V. P. Research and Development
The Ducane Company, Inc., 118 West Main Street, Blackville, South Carolina 29817-1199

Dear Mr. Adams: This is in response to your July 1, 1991, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces regarding blower time delay for The Ducane Company, Inc. (Ducane) FPAA series of gas furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, and 55 FR 37521, September 12, 1990; Trane Company, 54 FR 19226, May 4, 1989, and 55 FR 41589, October 12, 1990; Lennox Industries, 54 FR 50525, December 7, 1989; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; Inter-City Products Corporation, 55 FR 31099, July 31, 1990, and 56 FR 27959, June 18, 1991; Amana Refrigeration Inc., 56 FR 853, January 9, 1991, and 56 FR 29957, July 1, 1991; Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991, and 56 FR 34200, July 26, 1991; Snyder General Corporation, 56 FR 14511, April 10, 1991; Goodman Manufacturing Corporation, 56 FR 20421, May 3, 1991; and Thermo Products, Inc., 56 FR 32205, July 15, 1991.

Ducane's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Ducane will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Ducane's Application for an Interim Waiver from the DOE test procedures for its FPAA series of gas furnaces regarding blower time delay is granted.

Ducane shall be permitted to test its line of FPAA series of gas furnaces on the basis of the test procedures specified in 10 CFR part 430, subpart B, Appendix N, with the modification set forth below.

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103-82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintan the draft in the flue pipe within 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 day period, if necessary.

Sincerely,

J. Michael Davis, P.E.,

Assistant Secretary, Conservation and Renewable Energy.

Ducane

DUCANE HEATING DIVISION

July 1, 1991.

Assistant Secretary, Conservation and Renewable Energy,
United States Department of Energy, 1000 Independence Ave., Washington, DC 20585.

Gentlemen: Please consider this Petition for Waiver and Application for Interim Waiver pursuant to Title 10 CFR 430.27.

Waiver is requested from the test procedures covering gas furnaces found at appendix N to subpart B of 10 CFR Part 430. The current Heat-Up Test procedure requires a 1.5 minute time delay between burner and blower startup. The Ducane Company is

requesting to use 30 seconds instead of 1.5 minutes for Series "FPAA" Gas Furnaces.

These models will employ an electronic blower time control that starts the blower in approximately 30 seconds. Our testing indicates an increase of one percent in AFUE using the 30 second time delay.

The Ducane Company seeks an interim waiver because it is likely that our waiver will be granted. Similar waivers have been granted to other manufacturers in the past.

A copy of this Petition for Waiver and Application for Interim Waiver will be sent to other manufacturers of similar type products.

Respectfully yours,

THE DUCANE COMPANY, INC.

Charles W. Adams,

V.P. Research and Development, Ducane Heating Division.

[FR Doc. 91-21527 Filed 9-6-91; 8:45 am]

BILLING CODE 6450-01-M

[Case No. F-029]

Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Furnace Test Procedures to Snyder General Corporation

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F-029) granting Snyder General Corporation (Snyder) a waiver for its GUI, GNI, GUH, GUA, GDA, and PGMA central furnaces from existing Department of Energy (DOE) test procedures regarding blower time delay for determining the model's energy efficiency.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Snyder has been granted a waiver for its GUI, GNI, GUH, GUA, GDA, and PGMA central furnaces, permitting the company to use an alternate test method in determining the Annual Fuel Utilization Efficiency (AFUE).

Issued in Washington, DC, August 28, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Decision and Order

The Energy Conservation Program for Consumer Products (other than automobiles) established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an interim waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An interim waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Snyder filed a "Petition for Waiver" dated January 4, 1991, in accordance with § 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on April 10, 1991, Snyder's petition and solicited comments, data and information respecting the petition. 56 FR 14511. Snyder also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on April 4, 1991. 56 FR 14511, April 10, 1991.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver". DOE consulted with Federal Trade Commission (FTC), concerning the Snyder petition. The FTC did not have any objections to the issuance of the waiver to Snyder.

Assertions and Determinations

Snyder's petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Snyder requests the allowance to test using a 60-second blower time delay when testing its GUI, GNI, GUH, GUA, GDA and PGMA central furnaces. Snyder states that since the 60-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 1.0 percent, the waiver should be granted.

Under specific circumstances, the DOE test procedures contain exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Snyder indicates that it is unable to take advantage of any of these exceptions of its GUI, GNI, GUH, GUA, GDA and PGMA central furnaces.

Since the blower controls incorporated on the Snyder furnaces are designed to impose a 60-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 60-second blower time delay when testing the Snyder GUI, GNI, GUH, GUA, GDA and PGMA central furnaces. Accordingly, with regard to testing the GUI, GNI, GUH, GUA, GDA and PGMA central furnaces, today's Decision and Order exempts Snyder from the existing provisions

regarding blower controls and allows testing with the 60-second delay.

It is therefore, ordered that:

(1) The "Petition for Waiver" filed by the Snyder General Corporation (Case No. F-029) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4) and (5).

(2) Not withstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, the Snyder General Corporation shall be permitted to test its GUI, GNI, GUH, GUA, GDA and PGMA central furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103-82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103-82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch. of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modification set forth above, Snyder General Corporation shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GUI, GNI, GUH, GUA, GDA and PGMA central furnaces manufactured by Snyder General Corporation.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective (Insert Date of Issuance), this Waiver supersedes the Interim Waiver Granted Snyder General Corporation on April 4, 1991, 56 FR 14511, April 10, 1991, (Case No. F-029).

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 91-21528 Filed 9-6-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[ERA Docket No. 91-62-NG]

Tarpon Gas Marketing Ltd. Application To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 9, 1991, of an application filed by Tarpon Gas Marketing Ltd. (TGM) requesting blanket authorization to export up to 100 Bcf of natural gas from the United States to Canada for short-term and spot market sales over a two-year period beginning October 1, 1991. TGM intends to utilize existing pipeline facilities for transportation of the volumes to be exported.

The application is filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than 4:30, eastern time, October 9, 1991.

ADDRESSES: Office of Fuels Programs Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Thomas W. Dukes, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: TGM, a Canadian corporation with its principal place of business in Calgary, Alberta, currently holds a blanket authorization to export natural gas to Canada, issued in DOE/FE Opinion and Order No. 315 on June 5, 1989 (1 FE Para. 70,224). Commencement of the requested authorization would coincide with the expiration of TGM's current authorization, on October 1, 1991.

Under the authorization sought, TGM would export natural gas to Canada on a best efforts basis for spot and short-term markets under contracts of two-years or less. TGM states that its month-to-month export sales would generally be priced in response to changes in prices posted in gas trade press periodicals and, for longer term blanket arrangements, indexed to the weighted average price for a "basket of fuels." TGM anticipates that the majority of the short term sales would be on an interruptible basis and determined by market conditions.

In support of its application, TGM asserts there is an excess supply of marketable domestic gas, and the requested export authorization would serve to improve U.S. trade balances while furthering the goal of increasing greater two-way trade emphasized by the 1988 U.S.-Canada Free Trade Agreement. In addition, TGM states the export proposal would have no adverse environmental impacts because only existing U.S. pipelines and export facilities would be utilized.

This export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial

parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the proposed arrangements. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be used in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of TGM's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 30, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-21533 Filed 9-6-91; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket Nos. PP-02, PP-04, and PP-14]

Intent To Rescind Presidential Permits Issued to Comision Federal De Electricidad

AGENCY: U.S. Department of Energy.

ACTION: Recission of Presidential permits.

SUMMARY: DOE intends to rescind Presidential permits contained in FE Docket Nos. PP-02, PP-04, and PP-14 at the request of CFE. CFE notified the DOE that it no longer utilizes the permitted electrical transmission facilities crossing the U.S. Mexican border.

DATES: *Effective Date:* October 9, 1991. Comments must be received on or before October 9, 1991.

ADDRESSES: Comments may be mailed to Office of Fuels Programs, Department of Energy, FE-52, room 3H-087, 1000 Independence Ave., SW., Washington, DC 20585. Comments may also be submitted by facsimile at (202) 586-6050.

FOR FURTHER INFORMATION CONTACT:

Lise Courtney M. Howe, Office of General Counsel (GC-32), (202) 586-2900.

Brenda M. Cheeks, Office of Fuels Programs (FE-52), Fossile Energy, (202) 586-1316.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Fossil Energy (FE) of the Department of Energy (DOE) is tasked with implementing Executive Order 10485 as amended by Executive Order 10238, which requires the issuance of Presidential permits for the construction, connection, operation and maintenance of electrical transmission facilities at the U.S. international border. In addition, FE administers the section 202(e) authority under the Federal Power Act which requires authorization to export electric energy from the U.S.

In a letter dated April 29, 1991, Comision Federal de Electricidad (CFE) notified the DOE that it no longer requires Presidential permits PP-02, PP-04, and PP-14 held by CFE and that all interconnection facilities authorized under those Presidential permits had been dismantled as of December 1964, February 1981, and December 1964, respectively.

Presidential permits PP-02, and PP-14 were originally issued to Matamoros, S.A., Compania Electrica on August 26, 1941, in Docket No. IT-5656 and February 18, 1948 in Docket No. IT-6503 respectively. CFE and Matamoros merged in 1964. Each permit authorized the construction, operation, connection and maintenance of a 12 kV transmission line at Brownsville, Texas.

Presidential permit PP-04 was issued to Light and Power Company of Acuna, S.A., on April 23, 1942, in Docket No. IT-5024. CFE succeeded to the interest of Light and Power Company of Acuna on August 7, 1969, and the Presidential permit was amended in Docket No. IT-5024 authorizing the operation, connection, and maintenance of an 11 kV transmission line between CFE and Del Rio, Texas.

The CFE has confirmed that the facilities authorized under Presidental permits PP-02, PP-04, and PP-14 and all interconnection facilities crossing the international border, including all wires and meters, as authorized in the Presidential permits, have been removed.

DOE finds that the recission of Presidential permits PP-02, PP-04, and PP-14 is consistent with the public interest because said facilities are no longer required or used by CFE.

The DOE hereby gives notice of its intent to rescind Presidential permits PP-02, PP-04, and PP-14, effective October 9, 1991, unless it receives any public comments objecting to the proposed recission.

Copies of the request for the rescission will be made available upon request for public inspection and copying at the address listed above.

Issued in Washington, DC on August 29, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Fossil Energy.

[FR Doc. 91-21532 Filed 9-6-91; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of July 29 Through August 2, 1991

During the week of July 29 through August 2, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

James L. Schwab, 7/29/91, LFA-0134

James L. Schwab filed an Appeal from a determination issued by the DOE's Office of Safeguards and Securities (OSS) of a request for information under the Freedom of Information Act. Mr. Schwab had sought all documents pertaining to a security investigation report by the Nevada Security and Safeguards Division (SSD), entitled "Inquiry Regarding Security Issues Surrounding the Termination of Security Inspector James L. Schwab." In its determination, the OSS stated that it had found no documents responsive to Mr. Schwab's request. Mr. Schwab challenged the adequacy of the search performed by OSS. In considering the Appeal, the Office of Hearings and Appeals (OHA) found that the only responsive document uncovered by OSS's search was a copy of the investigative report itself. Because Mr. Schwab already possessed the report an additional copy was not provided to him. The OHA determined that OSS had followed all procedures which were reasonably calculated to uncover the material Mr. Schwab sought in his request. Accordingly, the Appeal filed by Mr. Schwab was denied.

Supplemental Order

Bayport Refining Company, 7/31/91, KRX-0057

In Bayport Refining Company, 18 DOE ¶ 83,007 (1989), proposed decision pending, 51 FERC ¶ 63,011 (1990), the Department of Energy (DOE) issued a Remedial Order to Bayport Refining Company (Bayport) and its President Malcolm M. Turner. The DOE, however, severed the consideration of the personal liability of two other corporate officers, Harry F. Mason (Mason) and Robert H. Houser (Houser), and ordered further briefing on their liability. Subsequently, the DOE rejected the motion of the Economic Regulatory Administration (ERA) for further discovery on Mason's and Houser's liability. The DOE also ordered the ERA to either file the briefs that had been previously ordered or dismiss the remainder of the case. Economic Regulatory Administration/Bayport Refining Company, 20 DOE ¶ 83,012 (1990). The ERA decided to take the latter course. Consequently, the DOE dismissed the remainder of the allegations of personal liability concerning Messrs. Mason and Houser contained in the Proposed Remedial Order issued to Bayport.

Refund Applications

Farmers Cooperative Elevator Company, 8/1/91, RF272-77369

The Department of Energy issued a Decision and Order granting a refund from the crude oil overcharge funds to Farmers Cooperative Elevator Company (FCE), a company that purchased gasohol. The DOE determined that gasohol is a covered product. However, because gasohol is a 90/10 blend of gasoline and ethanol, 10 percent of FCE's gasohol purchases were deducted from FCE's claim. The refund granted to FCE is $24,230.

Indian Wells Oil Company/Tutcher Magic Gas Company, 7/31/91, RF317-5

The DOE issued a Decision and Order concerning an Application for Refund filed by Tutcher Magic Gas Co., Inc. a natural gas liquid products reseller. Tutcher sought a portion of the settlement fund obtained by the DOE through a consent order entered into by the owners of Indian Wells Oil Company. Since Tutcher's refund claim was in excess of $5,000, the firm was required to demonstrate that it was injured by Indian Well's pricing practices during the consent order period. Tutcher submitted separate cost bank data for butane and natural gasoline which indicated that it had banked costs well in excess of its requested refund. Because average market price data for butane and natural gasoline were not available for period prior to July 1975, the DOE extrapolated prices for these products for the entire consent order period by reference to propane price data which was available for Tutcher's marketing area. Using this information, the DOE determined that Tutcher incurred a substantial competitive disadvantage as a result of its Indian Wells purchases. After examining Tutcher's Application and supporting documentation, the DOE determined that Tutcher should receive a refund of $266,105 ($204,542 principal plus $61,563 interest).

Northern Illinois Gas Company, 7/29/91, RR272-72

Northern Illinois Gas Company, (NI-Gas) filed a Motion for Reconsideration of a Decision and Order issued by the Department of Energy on April 8, 1991. That determination denied the Application for Refund that NI-Gas had filed in the subpart V crude oil special refund proceeding. The denial was based on the finding that a wholly-owned subsidiary of NI-Gas' parent company had executed a "Waiver and Release" in connection with the Rail and Water Transporters Escrow fund in the Stripper Well Refund Proceeding. In considering the Motion for Reconsideration, the DOE held that NI-Gas failed to demonstrate significantly changed circumstances. The Motion for Reconsideration was therefore denied.

Reynolds Metals Company, 8/1/91, RF272-73969

The Department of Energy (DOE) issued a Decision and Order granting a refund from crude oil overcharge funds to Reynolds Metals Company (Reynolds) based on the firm's purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Reynolds is involved in the aluminum industry and purchased refined purchased petroleum for use in transportation, heating, process oils and manufacturing. Reynolds was an end-user of the products claimed in its application and was therefore presumed injured. The refund granted to Reynolds in this Decision is $199,502.

Trumbull Cooperative Association, 8/1/91, RF272-78697

The Department of energy issued a Decision and Order granting a refund from the crude oil overcharge funds to Trumbull Cooperative Association (Trumbull). The DOE determined that in an earlier claim, RF272-69653, Trumbull had received a refund for only a portion of its eligible purchases. Therefore, based on expenditures submitted by Trumbull, the DOE granted Trumbull's current claim for the remainder of its

purchases. The refund granted to Trumbull in this Decision is $12,608.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

A&N Trucking *et al*	RF272-88261	07/29/91
Amherst Public Schools *et al*	RF272-87409	07/31/91
Askov School District	RF272-78762	08/01/91
Atlantic Richfield Co./Locke's Arco *et al*	RF304-11901	08/02/91
Atlantic Richfield Co./Oasis Market *et al*	RF304-3802	07/29/91
Atlantic Richfield Co./The Hocking Cartage Co. *et al*	RF304-11900	07/31/91
Battle Creek Public Schools *et al*	RF272-80202	07/30/91
Bux-Mont Refuse Service *et al*	RF272-86816	07/29/91
Cattaraugus Central School Dist. *et al*	RF272-87649	07/29/91
Central Alabama Paving, Inc., *et al*	RF272-63871	07/29/91
Eaton Asphalt Paving Co., Inc	RD272-65206	07/29/91
Stafford Construction Co	RD272-65862	07/29/91
Citronelle-Mobile Gathering/Arkwright Finishing	RF336-8	07/29/91
Davis Mills Building	RF336-9	07/29/91
Reed & Barton	RF336-10	07/29/91
Citronelle-Mobile Gathering/Consolidated Edison Company of New York	RF336-13	07/29/91
Citronelle-Mobile Gathering/Fall River Housing Authority	RF336-16	07/31/91
Citronelle-Mobile Gathering/Hackensack Water Co	RF336-12	07/29/91
Citronelle-Mobile Gathering/Southeastern Massachusetts University	RF336-20	07/30/91
Paul A. Dever State School	RF336-21	07/30/91
City of Albion *et al*	RF272-86403	07/29/91
City of Jefferson City *et al*	RF272-85401	07/29/91
City of Worcester	RF272-48786	08/02/91
Elyria Asphalt Company, Inc	RF272-27825	07/30/91
Frankfort Materials Co	RF272-47706	07/30/91
Eureka Union Elementary *et al*	RF272-87201	07/29/91
Farmers Union Oil Company	RC272-129	08/02/91
Fieber Management *et al*	RF272-61763	07/29/91
Fletcher Oil & Refining Co./Caribou 4 Corners Oil, Inc	RF329-6	07/31/91
B. Puritz Oil Co	RF329-7	07/31/91
Gulf Oil Corporation/Curry's Gulf *et al*	RF300-11960	08/02/91
Gulf Oil Corporation/John Lee's Gulf Service *et al*	RF300-14500	07/31/91
Harrison School District 36 *et al*	RF272-87611	07/31/91
Lakota Public School District 66 *et al*	RF272-83800	07/29/91
Lemmon Thunder Hawk Co-Op	RF272-62388	08/01/91
Federation Cooperative	RF272-63560	08/01/91
Machias School Department *et al*	RF272-87967	07/29/91
McCall-Donnelly Jt. S.D. #421 *et al*	RF272-89200	08/01/91
McDonnell Douglas Corporation	RC272-128	08/02/91
Newman-Crosby Steel, Inc. *et al*	RF272-52577	07/31/91
Norwalk-Ontario School District *et al*	RF272-84202	07/31/91
Prairie Farm School District *et al*	RF272-87048	07/30/91
Shell Oil Company/Arlington Central Shell *et al*	RF315-8910	08/02/91
Shell Oil Company/Charles Willey	RF315-8789	07/30/91
Charles Willey	RF315-8793	07/30/91
Charles Willey	RF315-8796	07/30/91
Charles Willey	RF315-8797	07/30/91
Charles Willey	RF315-8798	07/30/91
Charles Willey	RF315-8799	07/30/91
Charles Willey	RF315-8801	07/30/91
Charles Willey	RF315-8802	07/30/91
Charles Willey	RF315-8803	07/30/91
Shell Oil Company/Wes Williams Shell Service *et al*	RF315-1082	08/02/91
Stet R-XV School District *et al*	RF272-87000	08/01/91
Texaco Inc./Bill's Texaco *et al*	RF321-835	08/01/91
Texaco Inc./Grafton Texaco *et al*	RF321-306	07/31/91
Texaco Inc./James D. Wilson *et al*	RF321-2372	07/29/91
Texaco Inc./Stockyard's Texaco Service Station *et al*	RF321-1401	08/01/91
The Budd Company	RF272-43324	07/29/91
The Budd Company	RD272-43324	07/29/91
The Sherwin-Williams Company	RF272-70259	08/01/91
Town of Bennington *et al*	RF272-88654	07/29/91
Yorktowne Paper Mills, Inc	RF272-11667	07/31/91
Yorktowne Paper Mills, Inc	RD272-413	07/31/91

Dismissals

The following submissions were dismissed:

Name	Case No.
Carlina Texaco	RF321-3589
Cox Petroleum	RF321-3959
Don Borland's Texaco	RF321-3591
Downtown Arco	RF304-12041
Fashion Fair Texaco	RF321-3593
Gladys Goldfarb	RF300-11878
H&B Service Station #2	RF321-327
Hagee's Texaco	RF321-3567
Harrison Leasing	RF272-69429
Hawkeye Texaco	RF321-3428
Hicksville Exempted Village Schools.	RF272-80204
J&R Texaco	RF321-3596
Jerry's Texaco	RF321-3595
John & Bob's Texaco	RF321-3594
Knox Abbott Texaco	RF321-3563

Name	Case No.
Lucille Bunn	RF300-16716
Payne's Market	RF321-4278
Podell, Rothman, David & Schechter.	RF272-67276
Podell, Rothman, David & Schechter.	RF272-67276
Sharon Forest Texaco	RF321-3435
Southeast Texaco	RF321-3433
Thurman Oil Company	RF300-13454
Town of Trumbull	RF272-82645
Trumbull School District	RF272-79564
Village of Nichols	RF321-9161
Yeagy's Texaco	RF321-3587

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guildelines, a commercially published loose leaf reporter system.

Dated: August 29, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-21529 Filed 9-6-91; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of August 5 Through August 9, 1991

During the week of August 5 through August 9, 1991, the decisions and orders summarized below were issued with respect to applications for refund or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Implementation of Special Refund Procedures

Kern Oil & Refinery, Erickson Refining Corp., Bill J. Graham, 8/7/91, LEE-0022, LEF-0023, LEF-0024

The DOE issued a Decision and Order implementing procedures for the distribution of $3,624,920, plus accrued interest, of crude oil overcharge monies obtained as a result of the settlement of enforcement proceedings involving Kern Oil & Refinery and Larry D. Delpit, Erickson Refining Corporation, and Bill J. Graham respectively. The DOE determined that the funds be distributed in accord with the Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, which states that crude oil overcharge monies shall be divided among the states (40 percent), the Federal government (40 percent), and eligible purchasers of refined petroleum products (20 percent). The specific information required in an Application for Refund is set forth in detail. The deadline for filing claims against these funds was established as June 30, 1992.

Refund Applications

Exxon Corp./Petrolane, Inc., 8/5/91, RF307-8929

The DOE issued a Decision and Order concerning an Application for Refund filed by Petrolane, Inc., a propane reseller with headquarters in Long Beach, California. Petrolane also sought a refund on behalf of Pyrofax, also a propane reseller, which is a corporate affiliate of Petrolane. Petrolane sought a portion of the settlement fund obtained by the DOE as a result of a consent order entered into by Exxon Corporation. Since Petrolane's refund claim was in excess of $5,000, the firm was required to demonstrate that it was injured during the consent order period by Exxon's pricing practices.

Petrolane submitted propane cost bank data which indicated that it had banked product costs well in excess of its requested refund. The DOE then rejected the competitive disadvantage analysis performed by Petrolane in support of its refund claim because the firm relied upon nation-wide propane market price data. The DOE performed its own competitive disadvantage analysis, relying upon region specific propane price data. Based upon its analysis, the DOE determined that Petrolane incurred a substantial competitive disadvantage during the consent order period as a result of its Exxon propane purchases. The DOE granted Petrolane a refund of $68,892 ($48,625 principal plus $20,267 interest).

The DOE also denied the Pyrofax portion of Petrolane's refund claim, noting that Petrolane failed to produce the documentation necessary for it to demonstrate that Pyrofax was injured by Exxon's propane prices during the consent order period.

Gulf Oil Corporation/Ryder Energy Distribution, 8/9/91, RF300-11185

The Department of Energy (DOE) has issued a Decision and Order granting refund monies from the Gulf Oil Corporation overcharge fund to Ryder Energy Distribution (Ryder) based upon its purchases of Gulf product made between August 1973 and January 1981. The applicant relied upon both the end-user and the retailer presumptions of injury. The applicant requested a refund for the gallons of product that its contract fleet purchased under the end-user presumption of injury. In addition, Ryder requested a refund under the forty percent presumption for its leasing operators. A retailer may not receive a benefit from both the forty percent and the end-user presumptions. Accordingly, Ryder was granted a refund equal to 40 percent of its allocable share for the product that it purchased, $36,637.

Lone Star Gas Company, 8/6/91, RF272-20177

Lone Star Gas Company (Lone Star), a natural gas pipeline utility company, filed an Application for Refund in the subpart V crude oil refund proceeding. A group of State governments and two territories of the United States (the States) objected to the application on the basis that Lone Star is not an end-user and that any distribution to customers should be made to the States directly. The DOE concluded that a portion of the refund would be used to reduce the original expense account to which the overcharges were booked. This will result in the appropriate portion of the reduction being allocated to Lone Star's regulated sales customers. These customers may experience a benefit through the lower operating expenses included in the ratemaking process. Lone Star will be entitled to the rest of the refund as a typical end-user. In view of that determination, the States' Objections to the Application were rejected. The DOE granted a refund of $31,858, based on purchases of 39,822,998 gallons of refined petroleum products.

State of Minnesota, 8/6/91, RF272-61569

The Department of Energy (DOE) issued a Decision and Order granting refund monies from crude oil overcharge funds to the State of Minnesota. The State applied on behalf of all specified State agencies. The DOE rejected objections filed by Phillip P. Kalodner, counsel for utilities, transporters and manufacturers in regard to this Application. Minnesota was granted a refund of $289,218.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

A.E. Schultz Corporation	RF272-363	08/05/91
Atlantic Richfield Co./Airport Garage *et al*	RF304-3822	08/08/91
Atlantic Richfield Co./Dick's Culver Arco, Inc. *et al*	RF304-12053	08/08/91
Atlantic Richfield Co./Remaly Arco *et al*	RF304-12000	08/09/91
Atlantic Richfield Co./Salt River Project Agricultural Improvement & Power Dist	RF304-3336	08/09/91
Bayless School District *et al*	RF272-80031	08/09/91
Carolina Coach Co	RF272-74475	08/05/91
City of Houston	RF272-63429	08/07/91
Columbus Fall River Coop Oil Co	RF272-29497	08/07/91
Cross Plains Independent School District *et al*	RF272-81208	08/09/91
Emmett Peterson, Sr	RC272-127	08/05/91
G&H Towing Co., Inc	RF272-38002	08/09/91
G&H Towing Co., Inc	RD272-38002	
Gulf Oil Corporation/George Kaelber Oil *et al*	RF300-14800	08/09/91
Gulf Oil Corporation/Independent Taxi *et al*	RF300-11609	08/09/91
Hammond Central School *et al*	RF272-80214	08/09/91
Hayes-Albion Corporation	RC272-130	08/07/91
M.S.A.D. #33 *et al*	RF272-80345	08/09/91
North Central Local School District *et al*	RF272-81819	08/09/91
Northeast Petroleum Industries/Boise Cascade Corporation *et al*	RF323-1	08/08/91
PPG Industries, Inc	RA272-42	08/07/91
R.B. Pond Construction Co	RF272-69703	08/07/91
R.B. Pond Construction Co	RF272-69703	
R.D. Wilmans & Sons *et al*	RF272-80027	08/09/91
Scripps Howard, Inc	RF272-13524	08/07/91
Scripps Howard, Inc	RF272-13524	
Shell Oil Company/Wheatley Shell Station *et al*	RF315-1311	08/09/91
Sutton Public Schools *et al*	RF272-82407	08/09/91
Tesoro/Langham Petroleum Corp	RF326-312	08/06/91
Texaco Inc./KEL Oil Company, Inc	RF321-9151	08/05/91
Edwards Oil Company	RF321-9152	
Edwards Oil Company	RF321-9153	
Texaco Inc./Rex Adams Texaco, Inc. *et al*	RF321-4579	08/05/91
Texaco Inc./Schaal Oil Co. *et al*	RF321-7025	08/06/91
Town of Colonial Beach Schools *et al*	RF272-81205	08/09/91
United States Gypsum Company	RF272-29509	08/09/91
United States Gypsum Company	RD272-29509	
United States Gypsum Company	RF272-42572	
United States Gypsum Company	RF272-69435	
United States Gypsum Company	RD272-29509	
United States Gypsum Company	RD272-42572	
Western Nuclear, Inc	RF272-8091	08/06/91
Western Nuclear, Inc	RF272-15082	
Winthrop Public Schools *et al*	RF272-81805	08/09/91

Dismissals

The following submissions were dismissed:

Name	Case No.
A.M. Ruffner	RF300-17074
Alaimo Fuel Company	RF323-26
B.G. Disher	RF300-16957
Bellemore Heating Oil	RF323-28
Berkeley Gulf Service Station	RF300-17080
Brice's Trucking Company, Inc	RF304-11969
Burbank Shell	RF315-9571
Carlton Ozburn	RF300-16188
Chick's Gulf Service	RF300-17084
Elk Service Station	RF304-3507
Farm Bureau Driveway Unit	RF300-16084
Francis & David Doolittle	RF300-16956
Gleason Co	RF307-10179
Gray Oil Company	RF323-16
James Dorsey	RF304-3546
Jay's Shell	RF315-9570
Julie's Service Station	RF304-3508
L. Frank Murphy	RF300-17077
Lexvold Oil Company	RF300-13105
Paul Desant's Arco	RF304-3477
Randoph Pittman	RF300-17053
Ray's Shell	RF315-9575
Ron's Turin Road Arco	RF304-3538
Ronald F. Bierwiler	RF300-17083
Ronald F. Bierwiler	RF300-17079
Sam's Shell	RF315-9569
Starbuck Creamery Company	RF272-64933
Steve Shell	RF315-9573
Taylor's Gulf Service	RF300-17017
Universal Transport, Inc	RF321-9914
Verdogo Shell	RF315-9574
Willett Nationalease Company	RF272-26030
Yarmouth Fuel Company	RF323-17

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: August 29, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 91-21530 Filed 9-6-91; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Loveland Area Projects, Rate Order No. WAPA-51

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order—Loveland Area Projects Firm Power Service Rate Adjustment.

SUMMARY: Notice is given of the confirmation and approval by the Assistant Secretary for Conservation and Renewable Energy of the Department of Energy (DOE) of Rate Order No. WAPA-51 and rate Schedule L-F3, placing increased rates for firm power for the Loveland Area Projects (LAP) into effect on an interim basis. The rates will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis for a 5-year period or until they are replaced by another rate.

The Post-1989 General Power Marketing and Allocation Criteria; Pick-Sloan Missouri Basin Program-Western

Division (Criteria) were published in the **Federal Register** on January 31, 1986 (51 FR 4012). The Criteria contractually integrated the resources of the Pick-Sloan Missouri Basin Program-Western Division (P-SMBP-WD) and the Fryingpan-Arkansas Project (Fry-Ark), both commonly referred to as the LAP, and called for the establishment of an initial rate for LAP power.

The fiscal year (FY) 1989 power repayment study (PRS) for the Pick-Sloan Missouri Basin Program (P-SMBP) and the FY 1989 PRS for Fry-Ark indicate that the existing rates do not yield sufficient revenue to satisfy the cost-recovery criteria through the study periods. The proposed P-SMBP-Eastern Division (P-SMBP-ED) rate schedules in Rate Order No. WAPA-50, along with the P-SMBP-WD revenue require requirement, will yield adequate revenue to satisfy the cost-recovery criteria for the P-SMBP. Rate Order No. WAPA-512 includes the revenue requirement for the P-SMBP-WD that was discussed in Rate Order No. WAPA-50, and will also satisfy the cost-recovery criteria for the Fry-Ark.

The LAP firm power rate was developed by combining the revenue requirements from the FY 1990 PRS for both the P-SMBP-WD and Fry-Ark. The proposed rates are as follows:

COMPARISON OF EXISTING AND PROPOSED POWER RATES

Class of power	Existing rate (FY 1991)	Proposed rate (FY 1992)	Proposed rate (FY 1993-96)
Rate Schedule	L-F2	L-F3	L-F3
Firm Capacity, Charge $/kw-month	$2.15	$2.46	$2.58
Firm Energy Charge, mills/KWh	8.39	9.59	10.03
Composite Rate, mills/kWh	16.77	19.17	20.06

DATES: *Effective Date:* The new rates will be placed in effect on an interim basis on the first day of the first full billing period beginning on or after October 1, 1991, and will be in effect pending the FERC's approval of them or substitute rates on a final basis for a 5-year period, or until superseded.

FOR FURTHER INFORMATION CONTACT:

Mr. Stephen A. Fausett, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539-3003, telephone (303) 490-7201.

Mr. Robert C. Fullerton, Director, Division of Marketing and Rates, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401-3398, telephone (303) 231-1545.

Mr. Jack Dodd, Acting Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G-061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585-0001, telephone (202) 586-5581.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), and August 23, 1991 (56 FR 41835), the Secretary of Energy delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary for Conservation and Renewable Energy of DOE; (3) and the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the FERC. The power rates for the LAP are established pursuant to the DOE Organization Act, 42 U.S.C. 7101, *et seq.*; the Reclamation Act, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); section 9 of the Flood Control Act of 1944, 58 Stat. 887, 891; and the other acts specifically applicable to the project system involved.

The March 1991 customer brochure explaining the background for the proposed LAP firm power rate adjustment was distributed to all LAP customers and other interested parties. In accordance with procedures for public participation in general rate adjustments (10 CFR part 903) the comment and consultation period was initiated on March 11, 1991, with the publication of a **Federal Register** notice announcing the proposed rate and procedures for public participation (56 FR 10267). A public information forum was held on March 25, 1991, in Northglenn, Colorado. The public comment forum was held on April 16, a 1991, in Northglenn, Colorado. The consultation and comment period ended June 10, 1991. During this period, interested parties made comments to Western concerning the proposed rates. Six comment letters were received, and five people commented orally. All comments were considered in the preparation of the rate order. Western has concluded that the LAP rate adjustment is needed.

In Rate Order No. WAPA-51, results of the Fry-Ark FY 1990 PRS are being compared to the FY 1989 PRS, which was the basis for the existing rates.

This Rate Order also reflects the revenue requirements for the PSMB-WD. The comparison shows the following differences:

1. While the actual operations and maintenance (O&M) expenses for Fry-Ark were less than forecasted by $0.2 million, the O&M expenses for P-SMBP were $8.85 million greater than expected. Since two-thirds of the LAP revenue requirements are generated by P-SMBP, these increases have a significant effect on LAP rates.

2. Purchased power costs for Fry-Ark were $0.4 million over forecast, while purchase power costs for P-SMBP were $32.3 million over forecast.

3. In addition, the increase costs for a new Public Service Company of Colorado transmission contract are included for the term of the contract.

Of the above factors, the one with the most impact is the matter of increased O&M expenses. O&M expenses are increasing due to inflation as well as responding to programmatic and administrative requirements such as safety programs and environmental compliance.

Rate Order No. WAPA-51 confirming and approving the LAP power rate on an interim basis is issued, and the new rate Schedule L-F3 will be promptly submitted to the FERC for confirmation and approval on a final basis.

Issued at Washington, DC, August 30, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Assistant Secretary for Conservation and Renewable Energy; Order Confirming, Approving, and Placing the Loveland Area Projects Firm Power Service Rate Into Effect on an Interim Basis

[Rate Order No. WAPA-51]

August 30, 1991.

In the Matter of: Western Area Power Administration Firm Power Rates for the Loveland Area Projects.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101, *et seq.*, the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation), under the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, and particularly by section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c) and acts specfically applicable to the Pick-Sloan Missouri Basin Program (P-SMBP) and the Fryiggpan-Arkansas Project (Fry-Ark), were transferred to and vested in the Secretary of Energy.

By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR19744), and August 23, 1991 (56 FR 41835), the Secretary of Energy delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary for Conservation and Renewable Energy of DOE; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 CFR 37835).

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

BAO: Billings Area Office
Corps: U.S. Army Corps of Engineers
Criteria: Post-1989 General Power Marketing and Allocation Criteria; Pick-Sloan Missouri Basin Program-Western Division, 51 FR 4012 (January 31, 1986)
Customer Brochure: A document prepared for public distribution explaining the background of the rate proposal contained in this rate order.
DOE: U.S. Department of Energy
DOE Order RA 6120.2: An order dealing with Power Marketing Administration Financial Reporting
FERC: Federal Energy Regulatory Commission
Fry-Ark: Fryingpan-Arkansas Project
FR: **Federal Register**
FY: Fiscal Year
Integrated Projects: Colorado-Big Thompson, Kendrick, North Platte, and Shoshone Projects
kW: Kilowatts
kW-month: The greater of (1) the highest 30-minute demand measured during the month, not to exceed the contract obligation, or (2) the contract rate of delivery
kWh: Kilowatthours
LAO: Loveland Area Office
LAP: Loveland Area Projects
M&I: Municipal and Industrial
mills/kWh: Mills per Kilowatthour
O&M: Operations and Maintenance
PRS: Power Repayment Study
P-SMBP: Pick-Sloan Missouri Basin Program
P-SMBP-ED: Pick-Sloan Missouri Basin Program-Eastern Division
P-SMBP-WD: Pick-Sloan Missouri Basin Program-Western Division
RI: Reclamation Instructions
Reclamation: Bureau of Reclamation, U.S. Department of the Interior
SCRB: Separable Costs-Remaining Benefits method of allocating project costs
SPA: Single Purpose Alternative
Western (WAPA): Western Area Power Administration, U.S. Department of Energy

Effective Date

The new rates will become effective on the first day of the first full billing period beginning on or after October 1, 1991, and will be in effect pending the FERC's approval of them or substitute rates on a final basis for a 5-year period, or until superseded.

Public Notice and Comments

1. Discussions on the proposed LAP power rates were initiated on February 1, 1991, when a letter announcing an informal meeting was mailed to all LAP customers and interested parties. The meeting took place on February 14, 1991. At this meeting, Western explained the philosophy used in the development of the rate.

2. On March 11, 1991, the formal 92-day customer consultation and comment period began with the publication in the **Federal Register** (FR) of the LAP; Pick-Sloan Missouri Basin Program-Western Division (P-SMBP-WD) and Fryingpan-Arkansas Project (Fry-Ark); Proposed Firm Power Rate (56 FR 10267). That notice officially announced the proposed rate and the public comment forums.

3. On March 11, 1991, a letter was mailed to all customers announcing the March 25, 1991, public information forum and a public comment forum on April 16, 1991. A copy of the customer brochure was mailed to each LAP firm power customer.

4. At the March 25, 1991, public information forum, Western representatives provided detailed explanations of the need for a rate adjustment. Western's staff also answered questions.

5. The public comment forum was held in Northglenn, Colorado, on April 16, 1991. Five persons representing customer organizations made oral comments on the proposed rates.

6. The consultation and comment period ended on June 10, 1991. During this period, interested parties made comments to Western concerning the proposed power rate. Five written comment letters were received. All comments were considered in preparing this rate order. Western responded to each commentor and has included these responses as part of the record.

Project Histories

Pick-Sloan Missouri River Basin Program.

The initial stages of the Missouri River Basin Project were authorized by section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 877, 891). The Missouri River Basin Project, later renamed the Pick-Sloan Missouri Basin Program (P-SMBP) to honor its two principal authors, has been under construction since 1944. The P-SMBP encompasses a comprehensive program of flood control, navigation improvement, irrigation, municipal and industrial (M&I) water development, and hydroelectric production for the entire Missouri River Basin. Multipurpose projects have been developed on the Missouri River and its tributaries in Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.

Fryingpan-Arkansas Project.

The Fry-Ark is a transmountain diversion development in Colorado authorized by the Act of August 16, 1962 (76 Stat. 389, as amended by 88 Stat. 1486, 1497 (1974)). The Fry-Ark diverts water from the Fryingpan River and other tributaries of the Roaring Fork River in the Colorado River basin on the west slope of the Rocky Mountains to the Arkansas River on the east slope of

the Continental Divide. The water diverted from the west slope, together with regulated Arkansas River water, provides supplemental irrigation, M&I water supplies, and produces hydroelectric power. Flood control, fish and wildlife enhancement, and recreation are other important purposes of Fry-Ark.

Loveland Area Projects.

The Post-1989 General Power Marketing and Allocation Criteria: Pick-Sloan Missouri Basin Program-Western Division (Criteria), published in the FR on January 31, 1986 (51 FR 4012) effectively integrated the resources of the P-SMBP–WD and the Fry-Ark. This operational and contractual integration, known as LAP, has allowed an increase in marketable resource, simplification of contract administration, and establishment of a blended rate for LAP power sales.

However, the P-SMBP and Fry-Ark each retain their own separate financial status. For this reason, separate power repayment studies (PRS) are prepared for each project annually. These PRS's are used to determine the ability of the power rates to generate sufficient revenue for repayment of project investments and cost during each project's prescribed repayment period. The revenue requirement from the Fry-Ark PRS is combined with the P-SMBP-WD revenue requirement derived from the P-SMBP PRS to develop one rate for LAP firm power sales.

A complete discussion of the project histories is found in the March 1991 customer brochures and is included in the supporting documentation.

Power Repayment Studies

The PRS for P-SMBP is prepared annually by Western's Billings Area Office (BAO) with the cooperation of the Loveland Area Office (LAO), Reclamation, and the Corps. River basin hydrology, water depletions, power generation, and project development data are among the many items Reclamation and the Corps contribute to the studies. For Fry-Ark, Western's LAO prepares the PRS in cooperation with Reclamation.

All PRS's are prepared in accordance with authorizing legislation and DOE Order No. RA 6120.2 on power marketing administration financial reporting. The PRS's array historic income, expenses, and investments to be repaid from power revenue, along with estimates for future years. They also portray the repayment of generation and transmission costs of the power system, as well as nonpower costs assigned to power for repayment, through the application of revenues over the repayment period of the project. The PRS's show, among other items, estimated revenues and expenses, the estimated amount of Federal investment that will be repaid, and the total estimated amount of Federal investment remaining to be repaid over the repayment period. The PRS's do not calculate or design rates, but rather produce the revenue requirement.

The PRS is conducted to assure that projected revenues will balance projected expenses and investment repayment. Some revenues is shared by P-SMBP and Fry-Ark, based upon the ratio of the individual project capacity to the total marketable capacity in the Criteria. Other revenue that is project specific is only credited to that project. Operations and maintenance (O&M) expenses and interest expenses are found in each PRS and are charged to the specific project that has incurred the expenses.

Within each PRS, revenues are first applied to repayment of annual expenses, which include O&M costs, purchased power and transmission costs, interest, and other expenses. Next, power revenues available after paying the annual expenses and any required power or irrigation investment expenses are then applied to project deficits and interest-bearing power investments. Any remaining power revenues are lastly applied to aid irrigation (irrigation aid applies only to the P-SMBP PRS). These studies are designed to repay the investment carrying the highest interest rate first. However, all investments are required to be repaid within their authorized repayment periods—50 years or expected service lives, whichever is less.

Purchased power and wheeling expenses that are directly attributable to a specific project are charged only to that project. For example, if one project is energy deficient, all purchased power costs resulting from that shortage will be assigned to that project. the remaining common costs, such as operational purchases, are divided according to the capacity ratio described above. In the event that the projects generate surplus energy, the same procedure will be used to distribute the benefits.

Existing and Proposed Rates

The existing and proposed rates for LAP firm power sales are as follows:

COMPARISON OF EXISTING AND PROPOSED POWER RATES

Class of power	Existing rate (FY 1991)	Proposed rate (FY 1992)	Proposed rate (FY 1993–1996)
Rate schedule	L-F2	L-F3	L-F3
Firm capacity, charge $/kw-month	$2.15	$2.46	$2.58
Firm energy charge, mills/kWh	8.39	9.59	10.03
Composite rate, mills/kWh	16.77	19.17	20.06

Certification of Rates

The Administrator of Western has certified that the LAP firm power rates are the lowest possible consistent with sound business principles. The rates have been developed in accordance with administrative policies and applicable laws.

Discussion

The Criteria were published in the FR on January 31, 1986 (51 FR 4012). The Criteria operationally and contractually integrated the resources of the P–SMBP–WD and Fry-Ark. The integrated resources are referred to as LAP. A blended rate was established for the sale of LAP power.

The FY 1990 P–SMBP PRS reflects the P–SMBP–WD revenue requirement for the firm power sales as follows:

FY 1992	P–SMBP–WD revenue requirement
Present Revenue Requirement 11.43 mills/kWh × 2,036,000,000 kWh	$23,271,480
Proposed 1st Step Increase 1.39 mills/kWh × 2,036,000,000 kWh	2,830,040
Total	$26,101,520

FY 1992	P-SMBP-WD revenue requirement
FY 1993–1996	
Present Revenue Requirement 11.43 mills/kWh × 2,036,000,000 kWh	$23,271,480
Proposed 2nd Step Increase (1.39 + .91 mills/kWh × 2,036,000,000 kWh)	4,682,800
Total	$27,954,280

The revenue requirement for the P–SMBP will be increased in two steps to yield the FY 1992 P–SMBP–WD amount of $26,101,520 and the FY 1993–96 amount of $27,954,280.

The FY 1990 Fry-Ark PRS showed that the present revenue requirement is not sufficient to meet the repayment criteria, and that the annual revenue requirement must increase by $2,185,400. The total Fry-Ark revenue requirement is as follows:

	Fry-Ark revenue requirement (FY 1992–96)
Present revenue requirement	$11,747,800
Proposed increase	2,185,400
Total proposed Fry-Ark revenue requirement	$13,933,200

The Fry-Ark revenue requirement contains two components. The project has an average annual energy generation of 52,000,000 kilowatthours (kWh) from flow-through water. This energy is assigned the current LAP energy value; i.e., 8.39 mills per kWh (mills/kWh). The remaining revenue requirement is derived from the firm capacity component. This is the procedure used in the study to account for the Fry-Ark portion of the energy marketed by LAP.

A table comparing the LAP existing revenue requirement to the proposed revenue requirement is shown below:

SUMMARY OF LAP REVENUE REQUIREMENTS

	Existing (FY 1991)	Proposed (FY 1992)	Proposed (FY 1993–1996)
P-SMBP-WD	$23,271,480	$26,101,520	$27,954,280
Fry-Ark	11,747,800	13,933,200	13,933,200
Total LAP	$35,019,280	$40,034,720	$41,887,480

To establish the LAP rate, Western developed the revenue requirements for LAP from the FY 1990 PRS's for both the P–SMBP and Fry–Ark, as shown above. The revenue requirements from both projects were combined to develop the LAP revenue requirement of $40,034,720 for the first step effective on the first day of the first full billing period beginning on or after October 1, 1991, and $41,887,480 for the second step effective on the first day of the first full billing period beginning on or after October 1, 1992. To meet the LAP revenue requirements, the two-step rates for firm capacity and energy were developed and initially proposed in the March 1991, Customer Brochure, Loveland Area Projects. The LAP brochure explains the background for the LAP and how the rate design concept was developed. The brochure was distributed to all LAP customers and other interested parties. Subsequently, in response to customer comments, Western maintained the two-step method to determine the firm capacity and energy rates of $2.46 per kW-month and 9.59 mills/kWh for LAP firm power for the first step and $2.58 per kW-month and 10.03 mills/kWh for the second step.

Statements of Revenues and Expenses

The rate schedule for firm power would produce average annual power revenues of $40,034,720 for the first step and $41,887,480 for the second step for LAP. This is necessary to satisfy the cost-recovery criteria as set forth in DOE Order No. RA 6120.2. The following table provides revenue (taken from the revised FY 1990 PRS) for firm power through the proposed rate-approval period.

FY	Western division firm sales	Fry-Ark firm sales	Total LAP
1992	$26,101,520	$13,933,200	$40,034,720
1993	27,954,280	13,933,200	41,887,480
1994	27,954,280	13,933,200	41,887,480
1995	27,954,280	13,933,200	41,887,480
1996	27,954,280	13,933,200	41,887,480

The P–SMBP PRS calculates the composite rate in mills/kWh for future firm power (capacity and energy) sales. In the Fry-Ark PRS, the study calculates the capacity rate in dollars per kW-year. The PRS adjusts the selected rate until sufficient revenues are generated to meet the cost-recovery requirement. The following table provides a summary of revenues and expenses through the 5-year rate-approval period. The P–SMBP revenue requirement is extracted from Rate Order No. WAPA–50.

FRYINGPAN-ARKANSAS COMPARISON OF 5-YEAR RATE APPROVAL PERIOD REVENUES AND EXPENSES

	Current FY 90 PRS data (1992–96)	Previous FY 89 PRS data (1991–95)	Difference
Total revenues	$73,404,805	59,037,200	14,367,605
Expenses:			
Operation and maintenance	14,575,016	14,062,739	512,277
Purchased power	15,054,245	0	15,054,245
Interest	41,004,364	37,935,891	3,068,473
Amortization	2,771,180	7,038,570	(4,267,390)
Capitalized expense	0	0	0
Total expenses	$73,404,805	$59,037,200	$14,367,605

Basis for Rate Development—LAP

The LAP firm power rate was developed by combining the revenue requirements from the FY 1990 PRS for both P-SMBP-WD and Fry-Ark. The LAP rate design maintains a 50/50 split between the revenue generated from the demand and energy charges. The revenue yield will vary among customers due to varying customer load factors. The proposed rate for firm power is $2.46 per kilowatt-month (kW-month) for firm capacity and 9.59 mills/kWh for firm energy for the first step to be implemented in FY 1992, and $2.58 per kW-month for firm capacity and 10.03 mills/kWh for firm energy for the second step to be implemented in FY 1993.

Primary Issues—Public Comments

During the 92-day comment period, Western's LAO received six comment letters. During the April 16, 1991, public comment forum, five people representing four organizations commented orally.

Written comments were received from the following sources:

Platte River Power Authority (Colorado)
Loveland Area Customer Association and Tri-State Generation and Transmission Association, Inc. (Colorado, Wyoming)
Tri-State Generation and Transmission Association, Inc. (Colorado, Wyoming, and Nebraska)
City of Colorado Springs (Colorado)
Kansas Electric Power Cooperative, Inc. (Kansas)
Arkansas River Power Authority (Colorado)

Representatives of the following organizations made oral comments:

Loveland Area Customer Association (Colorado)
Tri-State Generation and Transmission Association, Inc. (Colorado, Wyoming, and Nebraska)
Platte River Power Authority (Colorado)

This LAP rate adjustment, Rate Order No. WAPA-51, contains components derived both from the P-SMBP and Fry-Ark repayment studies. Comments received during the consultation and comment period for the LAP pertain to both projects. Western has grouped the comments into two categories: P-SMBP only and LAP firm power rate (may include only Fry-Ark or a combined comment that addresses both projects).

Western is concurrently processing a rate adjustment for P-SMBP-ED, Rate Order No. WAPA-50. All comments directed specifically to P-SMBP issues will be addressed in Rate Order No. WAPA-50 and will not be addressed in this rate order (Rate Order No. WAPA-51). A copy of Rate Order No. WAPA-50 is included as supporting documentation for this rate submission.

The comments received, oral and written, dealt with O&M expense levels, interest payments, cost allocations to Fry-Ark, purchase power projections, and accounting for transmission expenses/revenues. The comments, which are paraphrased for brevity, and responses are discussed below:

Issue: The customers commented that they are concerned with Western's current O&M costs and the rate at which their costs have been increasing.

Response: Western has reviewed these expenses both internally and with power customer representatives. Western plans to continue this review process with the power customers in the future. In the budget formulation process, Western reviews these expenses before inclusion in the PRS. Western has instituted a comprehensive cost-containment program initially in the area of indirect expenses and now the base O&M program. Western continues to share the power customers' concerns with Reclamation and the Corps and has received assurances from each agency that it will participate in cost-containment programs associated with O&M functions. Western remains committed to cost containment while striving for efficiency and providing quality customer service. During the comment forum Western responded to many specific questions concerning Western's, Reclamation's, and the Corp's O&M projections; the questions and responses can be found in the record.

Issue: The customers questioned Western's methods of handling interest payment deficits. Specifically, they pointed out that in the PRS, during the years 1989 through 1992, Western shows interest payment deficits while during this same time period it shows principal payments credited to some of the Colorado-Big Thompson, Kendrick, North Platte, and Shoshone Projects (Integrated Projects). The customers questioned if any principal payments should be shown for repayment of Fry-Ark investments or integrated project costs during the years P-SMBP is deficient.

Response: The LAP Post-1989 Marketing Criteria integrates the operations, ratesetting, and revenue collection of both the P-SMBP-WD and Fry-Ark. The FY 1990 P-SMBP ratesetting PRS contains Integrated Projects costs including the consolidated results of separate PRS's completed for each of the Integrated Projects. The total Integrated Projects costs, including principal payments, are treated as annual expenses, resulting in principal payments even in deficit years. Western recognizes that this process needs to be changed to reflect the financial integration of these projects. In the FY 1991 PRS, Western will distribute the Integrated Projects costs to the same categories as the remaining P-SMBP costs. This will eliminate Integrated Projects principal payments, unless required, in deficit years. However, it would be inappropriate to apply this concept to principal payments for Fry-Ark. LAP revenue is shared between the two projects on the basis of their individual revenue requirements and are determined by the individual's PRS's. Because the projects remain separated, revenues and expenses cannot be shifted from one project to another, even in cases where one project is revenue deficient and the other is not.

Issue: The customers expressed concern over the final cost allocation for the repayment of Fry-Ark. The customers commented that Western and Reclamation have never satisfactorily explained their actions and have ignored customer comments. More specifically, customer concerns are:

1. The procedures for conducting cost allocations are not discretionary authority of Federal agencies and the Separable Cost-Remaining Benefits (SCRB) process is promulgated by the Water Resources Council and, therefore, come under the purview of FERC.

a. The cost for the Single Purpose Alternative (SPA) peaking plant is unreasonably high.

b. The actual separable costs for the pumped storage plant are incorrect.

c. The joint costs identified are not truly joint (i.e. they are not needed, used, or beneficial to the power function.)

d. The cost of separable power includes an allocation of capitalized O&M to power of $49,000,000.

2. The cost allocations for a project cannot be changed without congressional approval. Therefore, Western should use the cost allocations which prevailed when power was first marketed.

Response: Western based its PRS on the best available data. Over the past 3 years, Western has actively pursued the issue of Fry-Ark investments and cost allocations with Reclamation. Western has had some success, particularly in redefining the inservice date for Mount Elbert Unit 1. Reclamation also modified the procedure used to allocate joint costs between Mt. Elbert Units 1 and 2. These actions pervented further increases in the revenue requirements in the Fry-Ark PRS.

Western asked Reclamation to begin the final cost allocation process prior to the commencement of a rate adjustment based on FY 1990 financial information. On January 23, 1991, Reclamation and Western staff met to outline the process and responsibilities required to complete the final cost allocations. Western offered its assistance in completing power calculations used in the SCRB process. Reclamation developed a schedule and implementation plan for completion of the final allocations prior to September 30, 1991. It now appears that the schedule may not be met.

On April 8, 1991, Western sent Reclamation a series of proposals that would affect the outcome of the final allocation. Reclamation is considering Western's proposals in its analysis.

Rather than ignoring customer comments, Western has pursued customer concerns within the limit of its administrative authority. However, determination of final cost allocations is a functional responsibility of Reclamation. Reclamation is also sensitive to Western's customer concerns. However, Reclamation's customer base also includes other interests.

Western's response to the remaining allocation issues are as follows:

1. The SCRB process is being used by Reclamation to calculate the final cost allocation. However, the fact that these procedures are required has no relationship to FERC review. Determination of final allocations is specifically excluded from FERC review in Delegation Order No. 0204–108 published May 30, 1986 (51 FR 19744).

2. Section 302(a)(3) of the DOE Organization Act states that cost allocations cannot be changed without congressional approval. As stated previously in Rate Order No. WAPA–31 and correspondence dated September 14, 1987, it is the position of Western and Reclamation that this section applies only to final cost allocations. As a result, cost allocations for Fry-Ark remain flexible until the final allocations are complete.

Additionally, Western disagrees that the preliminary cost allocations have been changed subsequent to customers contracting for Fry-Ark power. Current LAP contracts were signed in FY 1987. The cost allocations currently in use were based on FY 1983 data. The cost allocations have not changed since 1983.

3. Before addressing the individual issues raised in this section, a review of the calculation of the SPA is helpful (chapter 116 of Reclamation Instructions (RI)). The purpose of the SPA is to determine the alternative plant most likely to be built if this project was not built. RI offer several suggested alternatives that may be acceptable, such as fossil-fired steam, combined cycle, or combustion turbines. The total cost of the SPA is the estimated cost of the project over its useful life or 100 years, whichever is less. Reclamation generally assumes a 100-year life in this analysis. The expected life of most fossil-fired plants is 30 to 35 years; therefore, the cost of replacing the entire plant twice is included in the analysis. The analysis also includes the present worth value of annual operation and fuel costs. The total estimated annual cost of the SPA is calculated and the present worth is calculated using the project interest rate. For Fry-Ark, the estimated annual cost is $8,223,780. This cost capitalized at 3.046 percent for 100 years is $256,552,000.

The maximum justifiable expenditure is the SPA or the capitalized benefits, whichever is less. The SPA determines the maximum expenditure for Fry-Ark. In response to the specific Fry-Ark cost allocations:

3a. The total capitalized 100-year cost of the SPA is $1,281 per kilowatt (kW). The installed cost, as defined in the SPA calculation, is $627 per kW for Mt. Elbert Unit 1 and $677 per kW for Mt. Elbert Unit 2. It is not appropriate to use the $1,281 per kW for comparison to typical installed costs because this amount includes replacement costs and present worth values for annual fuel and O&M costs.

3b. The calculation or use of the $49 million of O&M has no bearing on the value that Western uses for investment repayment. The value that Western uses for investment in its PRS is the amount determined by Reclamation using the SCRB process, which includes both separable costs and joint costs assigned to power. It is not consistent with the SCRB process to only use separable costs in the PRS.

3c. Western agrees that joint costs should only apply to facilities that produce joint benefits. The Fry-Ark project, as planned and constructed, is a multipurpose pumped-storage project that also produces a small amount of flow-through energy using water collected and diverted from the west slope. Facilities that contribute to this diversion of water provide a benefit to the power function. Western has investigated this issue and found one joint facility that may not benefit the power function: Pueblo Dam and Reservoir. Western asked Reclamation to review this assignment of joint costs to power and anticipates that Reclamation will address this issue in the final cost allocations. The as-built separable cost is not the obvious single-purpose alternative cost. It is not acceptable to compare construction of a stand-alone hydroelectric facility to a multipurpose facility that is assigned joint costs. The RI does not indicate that using an identical facility is appropriate. Using this approach would result in an after-the-fact determination of appropriate costs in direct violation of RI.

3d. The $49 million capitalized separable O&M cost identified in the Fry-Ark SCRB is not related to historical or projected O&M costs in the PRS. The $49 million is one of two components included in the development of estimated separable costs. The first component is investment and interest during construction. The second is estimated O&M costs over the 100-year life of the project. The sum of these separable costs is subtracted from the SPA (above) to determine the remaining benefits. These remaining benefits are utilized in determining the joint costs that may be assigned to power. In the FY 1983 SCRB, Reclamation estimated that annual power O&M would be $1,573,584. Capitalized for 100 years at 3.046 percent, the total O&M value is $49,090,000. Western has requested Reclamation to update these numbers using actual historical O&M costs as a base. The result of using actual figures should be that the total separable cost in the SCRB increases and the percentage of joint costs assigned to power decreases.

It is important to remember that the purpose of the entire SCRB process is to determine the spread of joint investment and O&M costs among the benefitting features of the project. The only SCRB outcomes that are a factor in the PRS calculations are the total costs allocated to power and irrigation which could form the basis for determining irrigation assistance.

Issue: The customers believe that the allocation process used for purchased power costs should be based on project energy production, not project capacity. One of the comments included an alternate methodology to allocate the purchased power costs.

Response: Western recognizes that several methods of analysis could have been used to determine the distribution of purchased power costs. However, Western believes that the allocation method, as presented in its Rate Order No. WAPA–47 (55 FR 36869) and used to assign the purchased power costs to the P–SMBP–WD and Fry-Ark, is an equitable way to split expenses between two projects that are operationally integrated but financially separate.

The alternate allocation methods proposed do not recognize that the P-SMBP-WD production shortfalls and the Mt. Elbert pumping energy account were supplied by withdrawal from interchange accounts largely created through the use of P-SMBP-WD hydro resources. It is not equitable to defray Fry-Ark production shortfalls from those accounts. We also note that while the methods proposed reduce Fry-Ark expenses under the hydrological conditions occurring in FY 1990, those methods could result in virtually all purchased power expenses being charged to Fry-Ark in those years when P-SMBP-WD meets forecasted generation and Fry-Ark falls short. This also is not an equitable situation since purchased power expense is often associated with short-term operational problems with both projects that are unrelated to total annual production.

Western does not agree with the proposed rationale for allocating purchased power costs which would be distributed on the basis of normal planned energy contribution. Therefore, Western is not changing its allocation of purchased power costs as documented in Rate Order No. WAPA-47.

Issue: Customers asked why Western negotiated a new transmission contract with the Public Service Company of Colorado (PSCo) and expressed dissatisfaction with the way Western accounts for transmission expenses and revenues. Under the new contract, the P-SMBP-WD transmission revenues increase substantially while Fry-Ark transmission expenses increase substantially. The customers understand that the increase in revenues and expenses offset each other in total; however, this process adversely affects the LAP customers to a significant degree and is a benefit to the Eastern Division customers.

Response: Western was required to renegotiate at least a portion of a new transmission contract with PSCo. Contract No. 14-06-700-8429, dated June 1, 1976, between Western and PSCo, for the transmission of Mt. Elbert power over the PSCo transmission system was originally scheduled to terminate on June 1, 1990. The contract was extended to December 31, 1990, to cover the negotiation period. Western and PSCo chose to combine related transmission issues between Western and PSCo into a single contract rather than simply renegotiate arrangements for the transmission of Mt. Elbert power.

Western's customers are correct in their understanding that the increased costs under the new contract will be offset by the increased revenues. In fact, Western believes the consolidated contract will save Western's customers approximately $600,000 annually in transmission costs. Western believes that costs/revenues should be tied as much as possible to the particular facility receiving the expenses or benefit. The revenues to Western generated under this new contract are for the transmission of PSCo power over the P-SMBP transmission system, and the majority of the expense is for western to transmit power generated at Mt. Elbert over the PSCo transmission system to points of interconnection with Western's transmission system. With this philosophy in mind, Western believes the costs/benefits are correctly apportioned between the projects.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, Council on Environmental Quality Regulations (40 CFR part 1500-1508), and DOE guidelines published in the **Federal Register** on December 15, 1987 (52 FR 47662-47670) Western has reviewed the environmental impacts of the rates for LAP. Based upon the information in an environmental assessment (DOE/EA 0537), the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of NEPA. Therefore, the DOE has determined that the preparation of an environmental impact statement is not required and has issued a finding of no significant impact.

Executive Order 12291

DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western is exempt from sections 3, 4, and 7 of that Order, and therefore will not prepare a regulatory impact statement.

Availability of Information

Information regarding this rate adjustment, including all studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the power rates, is available for public review at the Loveland Area Office, Western Area Power Administration, Division of Rates, Studies, and Customer Service, 5555 East Crossroads Boulevard, Loveland, Colorado 80538-8986; Division of Marketing and Rates, Western Area Power Administration, 1627 Coal Boulevard, Golden, Colorado 80401-3398; and the Office of the Assistant Administrator for Washington Liaison, room 8G-061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585-2001.

Submission to FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for confirmation and approval on a final basis.

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective the first day of the first full billing period beginning on or after October 1, 1991, rate Schedule L-F3 for wholesale firm power for the Loveland Area Projects. This rate schedule shall remain in effect on an interim basis pending FERC confirmation and approval of these or substitute rates on a final basis for a period of 5 years, or until they are superseded.

Issued at Washington, DC, August 30, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Loveland Area Projects Schedule of Rates for Wholesale Firm Electric Service

[Schedule L-F3 (Supersedes Schedule L-F2)]

Effective

First step: The first day of the first full billing period beginning on or after October 1, 1991.

Second step: The first day of the first full billing period beginning on or after October 1, 1992, and will remain in effect through September 30, 1996, or until superseded, whichever occurs first.

Available: Within the marketing area served by the Loveland Area Office.

Applicable: The power and energy sold to customers as firm power service supplied through each meter at each point of delivery.

Character and Conditions of Service: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate

First Step

Capacity charge: $2.46 per kilowatt-month of billing demand for firm electric service.

Energy charge: 9.59 mills per kilowatthour of use.

Second Step

Capacity charge: $2.58 per kilowatt-month of billing demand for firm electric service.

Energy charge: 10.03 mills per kilowatthour of use.

Billing demand: The billing demand will be the greater of (1) the highest 30-minute demand measured during the month up to, but not in excess of, the delivery obligation under the power service contract, or (2) contract rate of delivery.

Adjustments

For Transformer Losses: If delivery is made at transmission voltage, but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligation, such overrun shall be billed at 10 times the above rate.

For Power Factor: None. The customer will normally be required to maintain a power factor at the point of delivery of between 95-percent lagging and 95-percent leading.

[FR Doc. 91-21535 Filed 9-6-91; 8:45 am]

BILLING CODE 6450-01-M

Pick-Sloan Missouri Basin Program-Eastern Division, Rate Order WAPA-50

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order—Pick-Sloan Missouri Basin Program-Eastern Division (P-SMBP-ED) Firm Power Service and Firm Peaking Power Service Rate Adjustment.

SUMMARY: Notice is given of the confirmation and approval by the Assistant Secretary for Conservation and Renewable Energy of the Department of Energy (DOE) of Rate Order No. WAPA-50 and rate Schedules P-SED-F5 and P-SED-FP5 placing increased firm power and firm peaking power rates for the P-SMBP-ED into effect on an interim basis. The rates will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them in effect on a final basis for a 5-year period or until they are replaced by other rates.

COMPARISON OF EXISTING AND PROPOSED RATES EASTERN DIVISION OF P-SMBP

Class of power	Existing (FY 1991)	Proposed (FY 1992)	Proposed (FY 1993-96)
Firm power service rate schedule	P-SED-F4	P-SED-F5	P-SED-F5
Firm capacity charge, $/kW-month	$2.25	$2.47	$2.74
Firm energy charge, mills/kWh	5.57	6.49	7.09
Composite rate, mills/kWh	9.86	11.25	12.16
Additional charge for firm energy in excess of 60-percent monthly load factor, mills/kWh	3.38	3.38	3.38
Firm peaking power service rate schedule	P-SED-FP4	P-SED-FP5	P-SED-FP5
Capacity charge, $/kW-month	$13.50	$15.42	$16.44
Energy charge, mills/kWh	5.57	6.49	7.09

DATES: *Effective Dates:* The new rates will become effective on the first day of the first full billing period beginning on or after October 1, 1991, and will be in effect pending the FERC's approval of them or subsitute rates on a final basis for a 5-year period, or until superseded.

FOR FURTHER INFORMATION CONTACT:

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Mr. Robert C. Fullerton, Director, Division of Marketing and Rates, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401-3398 (303) 231-1545.

Mr. Jack Dodd, Acting Assistant Administrator for Washington Liaison, Western Area Power Administration, room 8G061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585-0001, (202) 586-5581.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 0204-108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), and August 23, 1991 (56 FR 41835), the Secretary of Energy delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary for Conservation and Renewable Energy of DOE; (3) and the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the FERC.

The power rates for the P-SMBP are established pursuant to the DOE Organization Act, 42 U.S.C. 7101 *et seq.*, the Reclamation Act of 1902, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); section 9 of the Flood Control Act of 1944, 58 Stat. 887, 891; and the other acts specifically applicable to the project system involved.

Discussions on the proposed rate adjustment were initiated on January 31, 1991, when a letter announcing the preliminary informal customer meetings was mailed to all firm power customers and other interested persons. These meetings were conducted at four different locations on February 14 and 15, 1991. At these preliminary meetings, Western representatives explained the need for the increase and answered questions from those attending.

The consultation and comment period was initiated on March 11, 1991, with publication of a **Federal Register** notice (56 FR 10268) that officially announced the proposed rate adjustment and procedures for public participation. The **Federal Register** notice announced a series of public information forums that were held on March 25 and 26, 1991, in Northglenn, Colorado; Sioux Falls, South Dakota; Fargo, North Dakota; and Billings, Montana. Two public comment forums were held on April 16 and 17, 1991, in Northglenn, Colorado, and Sioux Falls, South Dakota. The consultation and comment period concluded June 10, 1991.

During the comment period, Western received 14 comment letters on the P-SMBP rate adjustment. At the April 16 and 17, 1991, public comment forums, six persons commented orally. Three major issues and several miscellaneous issues were raised. All comments were considered in preparation of the rate order. Westen has concluded that the P-SMBP rate adjustment is needed to meet cost-recovery criteria.

A power repayment study PRS is prepared annually in accordance with DOE Order RA 6120.2. The existing

power rates for P–SMBP are based on the fiscal year (FY) 1989 PRS. The FY 1990 PRS indicates that the existing rates do not yield sufficient revenue to satisfy the cost-recovery criteria through the study period.

The proposed rate adjustment is based upon the FY 1990 PRS. To prepare the ratesetting PRS, Western considered projections which will be used in the final FY 1991 PRS. Western's objective is to mitigate the rapidly increasing deficits due to reduced surplus sales revenue and increasing purchased power expense resulting from the drought on the P–SMBP. Using this concept, Western developed a two-step rate adjustment. The first step is based upon the FY 1990 PRS with only 2 future years of purchased power expense and 1 future year of reduced surplus sales revenue. The second step is based on the FY 1990 PRS utilizing projections of increased purchased power expense and reduced surplus sales revenue for the 6-year time period expected to be needed to refill the depleted reservoirs. In the second step, Western also considered expected increases in operations and maintenance (O&M) expenses. By implementing this two-step rate adjustment, Western will provide P–SMBP customers with a more accurate basis for budgeting their future power costs.

In Rate Order No. WAPA–50, results of the ratesetting PRS are being compared to the FY 1989 PRS, which was the basis for the existing P–SMBP rates. The comparison shows the following differences:

1. The projected O&M expenses for the 100-year study period have increased a total of $12.1 million per year.

2. Purchase power projected over the future 6-year period is $70 million. This purchase power projection allows time to refill the P–SMBP reservoir system.

3. Reduced surplus sales and increased purchased power costs appearing historically in the study have now accumulated $63 million in unpaid annual expenses. These and expected unpaid annual expenses over the next 2 years are projected to be repaid by 1997.

4. The power investments in the 5-year budget period have increased $28 million. New power investments are not projected beyond the 5-year budget period.

Of the above factors, the one with the most impact is increased O&M expenses. O&M expenses are increasing due to inflation as well as responding to programmatic and administrative requirements, such as safety programs and environmental compliance. Much of Western's O&M is being performed on an aging woodpole transmission system requiring additional safety precautions and a higher incidence of maintenance.

Rate Order No. WAPA–50, confirming and approving the P–SMBP–ED rate adjustment on an interim basis, is issued, and rate Schedules P–SED–F5 and P–SED–FP5 will be promptly submitted to the FERC for confirmation and approval on a final basis.

Issued in Washington, DC, August 30, 1991.

Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Assistant Secretary for Conservation and Renewable Energy Order Confirming, Approving, and Placing the Pick-Sloan Missouri Basin Program-Eastern Division Firm Power Service and Firm Peaking Power Service Rates into Effect on Interim Basis

[Rate Order No. WAPA–50]

August 30, 1991.

In the matter of Western Area Power Administration Rate Adjustment for Pick-Sloan Missouri Basin Program-Eastern Division.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101, *et seq.*, the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation), under the Reclamation Act of 1992, 43 U.S.C. 372, *et seq.*, as amended and supplemented by subsequent enactments, and particularly by section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the Pick-Sloan Missouri Basin Program (P–SMBP), were transferred to and vested in the Secretary of Energy.

By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), and August 23, 1991 (56 FR 41835), the Secretary of Energy delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary for Conservation and Renewable Energy of DOE; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). This rate order is issued pursuant to the delegation to the Administrator and the Assistant Secretary for Conservation and Renewable Energy and the rate adjustment procedures at 10 CFR part 903, published in the **Federal Register** on September 18, 1985 (50 FR 37835).

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

Corps: U.S. Army Corps of Engineers.
Criteria: Post–1989 General Power Marketing and Allocation Criteria; Pick-Sloan Missouri Basin Program-Western Division, 51 FR 4012 (January 31, 1986).
Customer Brochure: A document prepared for public distribution explaining the background of the rate proposal contained in this rate order.
DOE: U.S. Department of Energy.
DOE Order RA 6120.2: An order dealing with Power Marketing Administration Financial Reporting.
FERC: Federal Energy Regulatory Commission.
Fry-Ark: Fryingpan-Arkansas Project.
FY: Fiscal Year.
Integrated Projects: Colorado-Big Thompson, Kendrick, North Platte, and Shoshone Projects.
kW: Kilowatts.
kWh: Kilowatthours.
kW-month: The greater of (1) the highest 30-minute demand measured during the month, not to exceed the contract obligation or (2) the contract rate of delivery.
LAP: Loveland Area Projects.
M&I: Municipal and Industrial.
mills/kWh: Mills and Kilowatthour.
MW: Megawatts.
NEPA: National Environmental Policy Act of 1969.
O&M: Operations and Maintenance.
PRS: Power Repayment Study.
P-SMBP: Pick-Sloan Missouri Basin Program.
P-SMBP-ED: Pick-Sloan Missouri Basin Program-Eastern Division.
P-SMBP-WD: Pick-Sloan Missouri Basin Program-Western Division.
REC: Rural Electric Cooperatives.
Reclamation: Bureau of Reclamation of the Department of the Interior.
Western (WAPA): Western Area Power Administration of the Department of Energy.

Effective Date

The new rates will become effective on an interim basis on the first day of the first full billing period beginning on or after October 1, 1991, and will be in effect pending the FERC's approval of them or substitute rates on a final basis for a 5-year period, or until superseded.

Public Notice and Comment

1. Discussions on the proposed rate adjustment wee initiated on January 31,

1991, when a letter announcing preliminary informal customer meetings was mailed to all firm power customers and other interested persons. These meetings were conducted at four different locations on February 14 and 15, 1991. At the preliminary meetings, Western representatives explained the need for the increase and answered questions from those attending.

2. On March 11, 1991, a formal 92-day customer consultation and comment period was initiated with an announcement in the **Federal Register** at 56 FR 10268 of the proposed adjustment to the P-SMBP firm power rate. That notice also announced four public information forums conducted on March 25 and 26, 1991, and two public comment forums conducted on April 16 and 17, 1991. The information forums were further advertised with a March 15, 1991, press release.

3. On March 8, 1991, a customer brochure was mailed to all customers and other interested persons. This mailing also included a letter announcing the public information and comment forums.

4. At the information forums held on March 25 and 26, 1991, Western representatives further explained the need for the rate increase and answered questions.

5. The comment forums were conducted on April 16 and 17, 1991, to give the public an opportunity to comment for the record. Six persons representing customers and customer groups made oral comments. Fourteen comment letters were received during the 92-day comment period which ended June 10, 1991. All formally submitted comments have been addressed in this rate order. Western responded to each commentor, and has included those responses as part of the record.

Project History

The initial stages of the Missouri River Basin Project were authorized by section 9 of the Flood Control Act of December 22, 1944 (58 Stat. 877, 891). The Missouri River Basin Project, later renamed the Pick-Sloan Missouri Basin Program to honor its two principal authors, has been under construction since 1944. The P-SMBP encompasses a comprehensive program of flood control, navigation improvement, irrigation, municipal and industrial (M&I) water development, and hydroelectric production for the entire Missouri River Basin. Multipurpose projects have been developed on the Missouri River and its tributaries in Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.

Power Repayment Study

The power repayment study (PRS) for the P-SMBP is prepared by Western with the cooperation of Reclamation and the U.S. Army Corps of Engineers (Corps). River basin hydrology, water depletions, power generation, and project development data are among the many items Reclamation and the Corps contribute to the study. The PRS is prepared in accordance with P-SMBP authorizing legislation and with DOE Order No. RA 6120.2 on power marketing administration financial reporting.

The PRS is conducted to assure that projected revenues will balance projected expenses. Some categories of expenses in the PRS are operations and maintenance (O&M) expenses, interest expenses, repayment of replacements and investment, payments to the Colorado-Big Thompson, Kendrick, North Platte, and Shoshone Projects (Integrated Projects), and repayment of those irrigation costs that are to be repaid from power revenues. Future annual power revenue estimates are based on the latest hydrology, depletions, and marketing projections. Revenues are first applied to repayment of annual expenses, which include O&M costs, payments to the Integrated Projects, purchased power and interest expenses, and other costs. Next, power revenues available after paying the annual expenses and any required power or irrigation investment payments are then applied to the repayment of project deficits and interest-bearing commercial power investments. Any remaining power revenues are lastly applied to aid irrigation. The study is designed to repay the investment carrying the highest interest rate first. However, all investments are required to be repaid within their authorized repayment periods—expected service life or 50 years, whichever is less for power and replacement investments, and up to 60 years for irrigation, which includes a 10-year development period.

Pursuant to the 1965 Garrison Unit Authorization Act, costs relating to specific irrigation units (including main-stem and other reservoir storage and irrigation-pumping-power cost assignments, if appropriate) constructed or under construction on June 30, 1964, are to be repaid within the earliest practicable time period after completion of repayment of interest-bearing commercial power investment, but prior to irrigation units constructed after that date. Costs relating to new (constructed after June 30, 1964) and future irrigation units, divisions, or irrigation blocks (including main-stem and other reservoir storage and irrigation-pumping-power cost assignments, if appropriate) are to be repaid within 50 years following an allowable development period (usually 10 years) after an individual unit, division, or irrigation block becomes benefit-producing. The first new irrigation unit not constructed or under construction on June 30, 1964, was placed in service in 1990, thus establishing the end of the repayment period for the old irrigation units.

The legislative history of the P-SMBP, principally Senate Document No. 191, 78th Congress, 2nd Session (1944), recognized that portions of the power-producing generation capacity of the project would be used for Federal project irrigation and drainage pumping service. It also established that the cost of that portion of the power system reserved for irrigation pumping would be interest free. Accordingly, analyses of the P-SMBP have assumed that a percentage of the power would be considered as pumping power reserved or irrigation pumping, and as such, the same percentage of the power investment would be suballocated as interest-free irrigation pumping cost. The percentage for suballocation of the costs is determined by the relationship of total project pumping peak load demand at the generators to power system generating capacity (398,360 kilowatts (kW) of ultimate pumping requirements divided by 2,522,600 kW of total system capacity). The application of this ratio results in 15.8 percent of the investment costs allocated to power being suballocated to pumping purposes. These suballocated costs are scheduled for repayment with the associated irrigation projects or units.

A complete discussion of the project history and a general description of the PRS are found in the March 1991 Customer Brochure that is included in the record.

Existing and Proposed Rates

Eastern Division

The existing firm power rates and the proposed firm power rates necessary to meet the revenue requirements for the P-SMBP-ED are listed below. The proposed rates will be implemented in two steps. Step 1 rates are to become effective on an interim basis on the first day of the first full billing period beginning on or after October 1, 1991. Step 2 rates are to become effective on the first day of the first full billing period beginning on or after October 1, 1992.

	Existing (FY 1991)	Proposed (FY 1992)	Proposed (FY 1993-96)
Firm Power Service Rate Schedule	P-SED-F4	P-SED-F5	P-SED-F5
Firm Capacity Charge, $/kW-month	$2.25	$2.57	$2.74
Firm Energy Charge, mills/kWh	5.57	6.49	7.09
Composite Rate, mills/kWh	9.86	11.25	12.16
Additional Charge for Firm Energy in Excess of 60-Percent Monthly Load Factor, mills/kWh	3.38	3.38	3.38
Firm Peaking Power Service Rate Schedule	P-SED-FP4	P-SED-FP5	P-SED-FP5
Capacity Charge, $/kW-season	$13.50	$15.42	$16.44
Energy Charge, mills/kWh	5.57	6.49	7.09

Western Division

The Loveland Area Projects rate will be designed to recover the P-SMBP-WD revenue requirements for P-SMBP and the revenue requirements for Fryingpan-Arkansas Project (Fry-Ark). The adjustment to the LAP rate is a separate formal procedure which is documented in Rate Order No. WAPA-51. Rate Order No. WAPA-51 is also scheduled to go in effect on the first day of the first full billing period beginning on or after October 1, 1991. The LAP rates will yield the revenue requirements for fiscal year (FY) 1992 and FY 1993-96 for the P-SMBP-WD.

Certification of Rate

The Administrator of Western has certified that the P-SMBP-ED firm power and firm peaking rates are the lowest possible consistent with sound business principles. The rates have been developed in accordance with administrative policies and applicable laws.

Discussion

Altough the P-SMBP is considered a single entity for financial and repayment purposes, the power generated by the P-SMBP is marketed in two separate and distinct areas. These are known as the Eastern Division and the Western Division, and each has its own marketing plan and method of designing rates to collect required revenue from power sales.

The existing and proposed revenue requirements for the Eastern and Western Divisions for the P-SMBP are as follows:

	Revenue Requirements		
	Existing (FY 1991)	Proposed (FY 1992)	Proposed (FY 1993-96)
Firm Power Service			
P-SMBP (Total)	$105,727,320	$120,177,760	$129,638,120
Eastern Division	82,455,840	94,076,240	101,683,840
Western Division	23,271,480	26,101,520	27,954,280
Firm Peaking Power Service			
Eastern Division	$10,125,000	$11,457.060	$12,214,920

The rate adjustment would increase annual P-SMBP-ED firm power revenue from $92.6 million in FY 1991 to $105.5 million in FY 1992 and to $113.9 million in FY 1993. The increase is necessary to satisfy the cost-recovery criteria as set forth in DOE Order No. RA 6120.2.

Statement of Revenue and Related Expenses

The following table provides a summary of revenue and expense data through the 5-year proposed rate approval period. Other revenues include irrigation pumping, P-SMBP-WD project use, and Other Revenues found in the PRS.

P-SMBP COMPARISON OF 5 YEAR RATE PERIOD REVENUES AND EXPENSES ($1,000)

	FY 1990 rate study 1992-96	FY 1989 rate study 1991-95	Difference
Revenues			
ED Firm Commercial	$502,645	$427,698	$74,947
WD Firm Commercial	137,919	119,859	18,060
ED Peaking Power	60,317	51,936	8,381
Other	334,126	287,878	46,248
Total Revenues	$1,035,007	$887,371	$147,636
Expenses			
Operations & Maintenance	$565,597	$480,739	$84,858
Purchased Power	39,150	0	39,150
Interest	303,089	263,681	39,408
Amortization	53,752	65,052	(11,300)
Capitalized Expense	(16,759)	20,919	(4,160)
Integrated Projects	56,660	56,980	(320)
Total Expenses	$1,035,007	$887,371	$147,636

A breakdown of costs by class for service is not available.

Basis for Rate Development—P-SMBP-Eastern Division

The P-SMBP-ED rate design strives to maintain approximately a 50/50 split between the revenue from the demand and energy charges. The revenue yield will vary among customers because of a customer's individual load characteristics.

The proposed $2.57/kilowatt-month (kW-month) firm capacity charge and 6.49 mills/kWh firm energy charge in FY 1992 will yield the necessary revenue for the first year of the rate adjustment effective on the first day of the first full billing period on or after October 1, 1991. To provide the necessary revenue, an increase to a $2.74/kW-month firm capacity charge and 7.09 mills/kWh firm energy charge is proposed to be in effect on the first day of the first full billing period beginning on or after October 1, 1992. The rate-approval period terminates on September 30, 1996.

Basis for Rate Development—P-SMBP-Western Division

The revenue requirements for the P-SMBP-WD are used in developing the LAP rate schedules. These schedules are the subject of a separate formal rate adjustment procedure which is documented in Rate Order No. WAPA-51. Rate Order No. WAPA-51 is also scheduled to go in effect on the first full billing period beginning on or after October 1, 1991, and continuing through September 30, 1996. A copy of Rate Order No. WAPA-51 is included as supporting documentation for this rate submission.

Primary Issues—Public Comments

During the 92-day comment period, Western received 14 comment letters either requesting information or commenting on the P-SMBP rate adjustment. At the April 16 and 17, 1991, public comment forums, six persons representing customers and customer groups commented orally.

Written comments were received from the following sources:

Arkansas River Power Authority (Colorado)
City of Coon Rapids (Iowa)
City of Groton (South Dakota)
Corn Belt Electric Cooperative (Iowa)
East River Electric Power Cooperative (South Dakota)
Lincoln Electric System (Nebraska)
Loveland Area Customer Association (Colorado)
McLean Electric Cooperative (North Dakota)
Midwest Electric Consumers Association (Colorado) [Two letters]
North Iowa Municipal Electric Cooperative Association (Iowa)
Platte River Power Authority (Colorado)
United Power Association (Minnesota)

Representatives of the following organizations made oral comments:

Arkansas River Power Authority (Colorado)
East River Electric Power Cooperative (South Dakota)
Lincoln Electric System (Nebraska)
Loveland Area Customer Association (Colorado)
North Iowa Municipal Electric Cooperative Association (Iowa)
Tri-State Generation & Transmission Association, Inc. (Colorado)

Most of the comments received, oral and written, dealt with O&M expense levels, purchase power projections, and the proposed two-step rate adjustment. The comments and responses, which are paraphrased for brevity, are discussed below:

Issue: Operations and maintenance costs. Several customers expressed concerns with increases projected for O&M expenses by the Federal agencies administering P-SMBP. All Federal agencies involved were requested to reexamine all categories of expenses associated with operation and maintenance of the system.

Response: Western has reviewed these expenses both internally and with power customer representatives. Western plans to continue this review process with the power customers in the future. In the budget formulation process, Western reviews these expenses before inclusion in the PRS. Western has formed a Cost Containment Task Force to make recommendations on reducing O&M expenses, initially in the area of indirect expenses, and has now expanded these efforts to the base O&M program. Western continues to share the power customers' concerns with Reclamation and the Corps and has received assurances from each agency that it will participate in the cost-containment programs associated with O&M functions. Western remains committed to cost containment while striving for efficiency and providing customer service. During the comment forum Western responded to many specific questions concerning Western's, Reclamation's, and the Corps' O&M projections; the questions and responses can be found in the record.

Issue: Future purchased power costs. Several customers opposed the projection of purchased power costs in the PRS. They felt that the projection of these costs was a departure from past practice and constituted a major decision made by Western without due process.

Response: The inclusion of projected future purchased power amounts is not a departure from past practices. The difference is the impact the long-term drought has on projected energy generation. In the past, as now, Western used median water expectations to determine energy generation available. The generation resulting from the expected water inflows would determine if purchased power was necessary. It is important to remember that generation resulting from median water inflows is not necessarily median generation. Reservoir storage has a large impact on the availability of energy. In the past studies, Western took an optimistic view of reservoir recovery from a short-term drought. The resulting generation available did not require any purchasing of power to firm Western's obligations. However, history has proven that the drought was not short term. Because of the deepening drought, Western has had to revise its view of reservoir recovery and the time of the return to median generation. This more pessimistic view has led to purchasing power to meet Western's obligations. In reiteration, Western is still using median water which in the past would produce energy generation to meet the contractual obligation; however, median water—because of reservoir storage reductions—will not generate enough energy to meet contractual obligations. These changes have been discussed in past rate procedures and are within the regulations stated in DOE Order No. RA 6120.2. These changes have been allowed due process since they have been discussed in the public process.

Issue: Two-step rate. Several customers commented that they approved of the two-step rate implementation, as it will allow for a better budgeting process and will provide for a longer-term planning window.

Response: Western expressed appreciation for their comments and included them in the formal record.

Additional Issues

In addition to the above, several issues were raised by customers and other interested persons, and addressed by Western. These issues are grouped in the following general categories:

Issue: Irrigation pumping rate. Customers commented that the present 2.5 mills per kilowatthour (mill/kWh) pumping rates does not approach project O&M rate components. It was requested that Western unilaterally increase the

pumping rate to a level sufficient to cover O&M.

Response: The irrigation pumping rate is a Reclamation rate, and Western does not have authority to modify the irrigation pumping rate. If Western were to use an increased rate in the PRS, revenue into the program would not be represented correctly unless the rate were at that value. In our public information forums of March 25–26, 1991, Reclamation informed the firm power customers that its Solicitor had determined that an ability-to-pay study would have to be performed prior to imposing a rate adjustment on the irrigators. At the time, they believed they could not program funds to perform the necessary studies before 1994. At the customers' request, Western pursued this issue. On June 13, 1991, Western met with Reclamation, and they are now scoping the size of the study and the timetable for completion. They expect that they will be able to use information previously collected and could complete the study work sooner and at less cost than indicated in the March meetings. However, this will not change the data in the present PRS.

Issue: Integrated projects—methodology. Would it be more beneficial to treat the Integrated Projects costs the same as any other P–SMBP costs and to eliminate the separate PRS's for each project?

Response: On January 24, 1991, Western and Reclamation reached agreement that it was necessary to prepare only one PRS and that the Integrated Projects costs would be included in a consolidated financial statement for the combined PRS. Western will prepare a single PRS for the FY 1991 PRS. Western believes it will offer greater flexibility in investment repayment. However, by comparison, the Integrated Projects are relatively small and should only affect the outcome by a minor amount.

Issue: One peaking power customer questioned the logic of tying the peaking rate to the charge for firm capacity and ratcheting peaking over a 6-month season. The settlement was also made that the effects of the drought should not affect the peaking rate as drought related costs are all essentially energy costs.

Response: The capacity charge for firm power is based upon monthly deliveries, and the peaking charge is based upon the full seasonal contract rate of delivery each month. This difference stems from the logic that peaking capacity was a costly resource to obtain and replace, and marketing plans done both in 1964 and 1980 took that difference into account. In order to maintain agreement with those long-range plans, Western feels that the product "peaking power" should not significantly change. The value/usefulness of the peaking power product will be reviewed during the public process for future marketing plans and at that time changes could be considered.

Past years of surplus water have helped to keep the peaking rates down; therefore, Western feels the proposed approach balances the impacts of both above and below normal water years on the peaking power rate. Western agrees that all the drought related costs to date have been energy costs; however, if the reservoirs are drawn down any further, capacity costs could be incurred. An unusual condition exists in the marketplace today. Short-term peaking power can be purchased for less than Western's rate for firm peaking power service; however, this has not always been true and will probably not be true in the future. Western's service should instead be compared to the cost of other long-term peaking contracts or the construction of a combustion turbine plant. In reviewing the cost of longer-term peaking arrangements, Western found costs in excess of $3/kW-month. All peaking power rates are expected to rebound in the future when surplus capacity which presently exists is no longer available.

Issue: Capitalized deficits. One customer commented that since some of the Federal investment has been prepaid due to past "good-water-year" power sales, the current deficit due to the drought should be subtracted from those prepayments.

Response: This, in effect, is what happens in the mechanics of the PRS. The power rates of the past have been relatively stable due to reduced interest expense on existing investments because of the added revenue received due to above-normal hydrology. Now, with the deficits due to the drought, the study is having to raise rates up to where they would have been had the high-interest bearing investments not been prepaid during the "good water years" in the past.

Issue: Submittal of two power repayment studies. Several customers expressed concern with Western providing two separate power repayment studies, one for 1990 and one for 1991. They requested that Western utilize and submit a single PRS to FERC.

Response: In the March 1991 meetings, Western discussed two studies—the FY 1990 PRS and the FY 1991 PRS. The FY 1991 PRS was developed by utilizing the FY 1990 PRS as a "base," incorporating reasonable estimates for generation projections, energy purchases, and O&M expenses. As we move closer to the end of FY 1991, those estimates continue to appear valid. Western will be submitting one study to FERC. That study will be identified as the "1990 Ratesetting Study" and is the study Western had discussed as the FY 1991 PRS.

Issue: Construction activity. One customer requested that each Federal agency furnish information to the customers that better defines the capital investments related to construction and any new projected annual costs, including justification of the need for the construction activity.

Response: Western, in its construction activity, prepares a Facility Development Report (FDR) which contains the estimates and justifications for each facility. Projected annual costs are included in those estimates. Copies of the FDR's are maintained by Western and are available for customer inspection at the appropriate Area Office. Western also discusses these facilities at the Missouri Basin Systems Group meetings prior to the start of construction. Reclamation and the Corps prepare similar decision documents in advance of their construction activities.

Issue: One customer group would like Western to be able to better identify costs in certain programs, such as O&M, conduct of environmental impact statements, and conservation and renewable energy programs (C&RE).

Response: Western is evaluating this request. Appendix F of the brochure tabulates the items comprising the broad category of O&M. The first four columns of the O&M expense table in appendix F identify each organization's estimate of O&M expense. Western is continuing to try to develop budget data to identify programmatic costs in such areas as C&RE and the development, in response to customer concerns.

Issue: A customer group requested that Western make the first power rate structures the same for both P–SMBP–Eastern Division and P–SMBP–Western Division customers.

Response: The use of separate firm power rate structures for P–SMBP Eastern and Western Division customers is a long-standing practice having its roots in the early years of the project. Until 1954, there were not only separate rates for the Eastern and Western Divisions of P–SMBP, there were also separate rates for each of the Integrated Projects. In 1954, the revenue requirements for the Western Division and Integrated Projects were combined and recovered through a single Western Division rate schedule that was different, and higher, than the Eastern

Division rate. A difference, in varying amounts, between the two rates has existed since that date; a comparison of capacity rates, energy rates, and yields is shown in table 1 below:

TABLE 1.—HISTORICAL RATE ADJUSTMENTS; PICK-SLOAN MISSOURI BASIN PROGRAM

Years Effective		Eastern Division			Western Division		
PRS	FY	$/kW-Month Capacity	mills/kWh		$/kW-Month Capacity	mills/kWh	
			Energy	Yield [2]		Energy	Yield
.....	1954	0.75	3.0	N/A	1.00	4.0	N/A
.....	1965	1.00	3.0	4.39	1.00	4.0	6.15
1972	1974	1.15	[1] 3.0/5.0	4.78	1.27	4.0	6.25
1974	1977	1.20	3.17/5.18	5.15	1.34	4.0	6.55
1980	1982	1.35	3.62/7.0	5.80	1.43	4.3	7.20
1982	1985	1.65	4.41/7.79	7.14	1.65	5.1	8.54
1987	1989	1.85	5.06/8.44	8.02	[3] N/A	[3] N/A	9.42
1989	1990	2.25	5.57/8.95	9.86	[3] N/A	[3] N/A	11.43
1989	1991	2.35	5.81/9.19	10.29	[3] N/A	[3] N/A	11.86

[1] P-SMBP Eastern Division established a two-tier energy rate after this period to add a surcharge for energy purchased above 60 percent load factor.
[2] The yield rates are computed as follows: Total Revenue Requirements divided by energy.
[3] Beginning October 1, 1989, the P-SMBP-Western Division revenue requirement was combined with the Fry-Ark revenue requirement to develop a single LAP rate. The Western Division rate was discontinued at that time.

Although the above comparison shows considerable variation in capacity and energy rate differences over the historical period, the best measure of differences in cost is the differences in yields.

Since 1972, the difference between Eastern and Western Division yields has varied between a high of 1.57 mills/kWh to a low of 1.40 mills/kWh. In the 1974 and 1977 rate adjustments, a conscious effort was made to narrow the gap between the yields from each division. This was a discretionary, administrative decision made with the purpose of developing a single firm power yield. The objective of a single yield was abandoned in the 1982 rate adjustment when it was determined that it would be more equitable to adjust each yield by an equal rate-impacting increment. This principle was subsequently followed in the rate adjustments of 1985, 1989, and 1990. Some of the factors influencing and sustaining this decision were the differences in each division's capacity/energy resource characteristics, differences in the Eastern Division Post-1985 and LAP Post-1989 marketing plans, differences in expense-to-revenue comparisons, and the long-standing practice of separate yield structures. The yield structures have developed in an evolutionary manner through a series of measured decisions.

As future changes occur in resources, cost allocations, water project development, environmental constraints, or other factors, Western will evaluate the equity of the yield requirements for each division and make adjustments if appropriate. For the current rate adjustment, however, Western will continue to use the yield requirement outlined in the rate brochure.

With regard to the other questions in this item, the Kansas customers' rates are the LAP rates since Kansas is in the LAP marketing area and the loads in Kansas are served with LAP resources which includes P-SMBP Western Division and Fry-Ark resources. The LAP rate includes P-SMBP Western Division and Fry-Ark revenue requirements. Had Kansas customers been included in the Eastern Division marketing area and received allocations from Eastern Division resources, they would have been charged Eastern Division rates. Regarding the question of State-by-State ratemaking, unlike the Eastern and Western Division rates, there have never been rates in effect on a State-by-State basis, and Western does not intend to pursue this suggestion.

Issue: It would be helpful for others if Western would retain the same titles for O&M cost categories or object classes from study to study. If name changes are necessary, they requested that Western reference the name used in previous PRS's.

Response: Western will, in the future, explain any name changes in the O&M cost categories and reference them to the previous PRS categories.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, Council on Environmental Quality regulations (40 CFR part 1500–1508), and DOE guidelines published in the **Federal Register** on December 15, 1987, (52 FR 47662–47670), Western has reviewed the environmental impacts of the rates for the P-SMBP. Based upon the information in an environmental assessment (DOE/EA 0537), the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of NEPA; therefore, the DOE has determined that the preparation of an environmental impact statement is not required and has issued a finding of no significant impact.

Executive Order 12291

DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western is exempt from sections 3, 4, and 7 of that order, and therefore will not prepare a regulatory impact statement.

Availability of Information

Information regarding this rate adjustment, including studies, comments, letters, memoranda, and other documents made or kept by Western for the purpose of developing the power rates, is available for public review at the Billings Area Office, Western Area Power Administration, Division of Market Studies, Rates and Resources, 2525 4th Avenue North, Billings, Montana 59107–5800, telephone (406) 657–6532; Division of Marketing and Rates, Western Area Power Administration, 1627 Cole Boulevard, Golden, Colorado 80401–5398; and the Office of Assistant Administrator, room 8G–061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

Submission to FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the FERC for

confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective the first day of the first full billing period beginning on or after October 1, 1991, rate Schedules P-SED-F5 and P-SED-FP5. These rate schedules shall remain in effect on an interim basis pending FERC confirmation and approval of them or substitute rates on a final basis for a period of 5 years, or until they are superseded.

Issued at Washington, DC August 30, 1991.

Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Pick-Sloan Missouri Basin Program—Eastern Division Schedule of Rates for Firm Power Service

[Schedule P-SED-F5 (Supersedes Schedule P-SED-F4)]

Effective:

First Step: The first day of the first full billing period beginning on or after October 1, 1991.

Second Step: The first day of the first full billing period beginning on or after October 1, 1992, and shall remain in effect through September 30, 1996, or until superseded, whichever occurs earlier.

Available:

Within the marketing area served by the Eastern Division of the Pick-Sloan Missouri Basin Program.

Applicable:

To the power and energy sold to customers as firm power service through each meter at each point of delivery.

Monthly Rate—First Step:

The following rates shall be in effect beginning with the effective date of this schedule and ending with the first day of the first full billing period beginning on or after October 1, 1992.

Capacity Charge: $2.57 per kilowatt-month of billing demand for firm power service as defined by the power sales contract.

Energy Charge: 6.49 mills per kilowatthour for all energy delivered as firm power service. An additional charge of 3.38 mills per kilowatthour (for a total of 9.87 per mills per kilowatthour) will be assessed for all energy delivered as firm power service that is in excess of 60-percent monthly load factor and within the delivery obligations under the provisions of the power sales contracts.

Monthly Rate—Second Step:

The following rates shall be in effect on the first day of the first full billing period beginning on or after October 1, 1992, and shall continue in effect through the term of this schedule.

Capacity Charge: $2.74 per kilowatt-month of billing demand for firm power service as defined by the power sales contract.

Energy Charge: 7.09 mills per kilowatthour for all energy delivered as firm power service. An additional charge of 3.38 mills per kilowatthour (for a total of 10.47 mills per kilowatthour) will be assessed for all energy delivered as firm power service that is in excess of 60-percent monthly load factor and within the delivery obligations under the provisions of the power sales contracts.

Adjustments:

For Character and Conditions of Service: Customers who receive deliveries at transmission voltage may in some instances be eligible to receive a 5-percent discount on capacity and energy charges when facilities are provided by the customer that result in a sufficient savings to the United States to justify the discount. The determination of eligibility for receipt of the voltage discount shall be exclusively vested in the United States.

For Billing of Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overrun shall be billed at 10 times the above rate.

For Power Factor: None. The customer will normally be required to maintain a power factor at the point of delivery between 95-percent lagging and 95-percent leading.

Pick-Sloan Missouri Basin Program—Eastern Division Schedule of Rates for Firm Peaking Power Service

[Schedule P-SED-FP5 (Supersedes Schedule P-SED-FP4)]

Effective:

First Step: The first day of the first full billing period beginning on or after October 1, 1991.

Second Step: The first day of the first full billing period beginning on or after October 1, 1992, and shall remain in effect through September 30, 1996, or until superseded, whichever occurs earlier.

Available:

To the customers of the Billings Area Office with generating resources enabling them to use firm peaking power service.

Applicable:

To the power and energy sold to customers as firm peaking power service.

Monthly Rate—First Step:

The following rates shall be in effect beginning with the effective date of this schedule and ending with the first day of the first full billing period on or after October 1, 1992.

Capacity Charge: $2.57 per kilowatt-month of the effective contract rate of delivery for peaking power or the maximum amount scheduled, whichever is greater.

Energy Charge: 6.49 mills per kilowatthour for all energy scheduled for delivery without return.

Monthly Rate—Second Step:

The following rates shall be in effect the first day of the first full billing period beginning on or after October 1, 1992, and shall continue in effect through the term of this schedule, or until superseded, whichever occurs earlier.

Capacity Charge: $2.74 per kilowatt-month of the effective contract rate of delivery for peaking power or the maximum amount scheduled, whichever is greater.

Energy Charge: 7.09 mills per kilowatthour for all energy scheduled for delivery without return.

Adjustments:

For Billing of Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for peaking capacity and/or energy, such overrun shall be billed at 10 times the above rate.

[FR Doc. 91-21534 Filed 9-6-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3993-4]

Stratospheric Ozone Protection Advisory Committee; Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of renewal for the Stratospheric Ozone Protection Advisory Committee.

The U.S. Environmental Protection Agency (EPA) announces the renewal of the Stratospheric Ozone Protection Advisory Committee (STOPAC) following consultation with the Committee Management Secretariat, General Services Administration. The EPA has determined that renewal of this advisory committee is in the public interest in connection with the performance of duties imposed on the EPA by law. The charter which continues this advisory committee for two more years, unless otherwise sooner terminated, will be filed with the appropriate Congressional committees and the Library of Congress. The STOPAC will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations issued in the implementation of the Act.

FOR FURTHER INFORMATION CONTACT: David Lee, (202) 260-1497 Stratospheric Ozone Protection Branch, Global Change Division, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation, ANR-445, 401 M St. SW., Washington, DC 20460.

Dated: August 30, 1991.

Jerry Kurtzweg,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91-21514 Filed 9-6-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies; Report to Congressional Committees

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking, Finance and Urban Affairs of the U.S. House of Representatives regarding differences in capital and accounting standards among the Federal Banking and Thrift Agencies.

SUMMARY: This report has been prepared by the Federal Deposit Insurance Corporation (FDIC) pursuant to section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Section 1215 requires each Federal banking agency to report annually to the Chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives any differences between the capital standard used by such agency and capital standards used by any other such agency. The report must also contain an explanation of the reasons for any discrepancy in such capital standards and must be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Doris L. Marsh, Examination Specialist, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, telephone (202) 898-8914.

The text of the report follows:

Report to the Committee on Banking, Housing and Urban Affairs of the United States Senate and to the Committee on Banking, Finance and Urban Affairs of the U.S. House of Representatives, Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies

Introduction

This report has been prepared by the Federal Deposit Insurance Corporation (FDIC) pursuant to section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) which reads, in part, as follows:

> Before the end of the 1-year period beginning on the date of the enactment of this Act, each appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) shall establish uniform accounting standards to be used for determining the capital ratios of all federally insured depository institutions and other regulatory purposes. Each such agency shall report annually to the Chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives any differences between the capital standard used by such agency and capital standards used by any other such agency. Each report shall contain an explanation of the reasons for any discrepancy in such capital standards, and shall be published in the **Federal Register.**

This introduction is followed by a discussion of the capital and underlying accounting and reporting standards employed by the FDIC as well as the two other federal banking agencies, the Board of Governors of the Federal Reserve System (FRB) and the Office of the Comptroller of the Currency (OCC), and the federal thrift supervisor, the Office of Thrift Supervision (OTS). Appendix One lists the differences in the capital standards among the FDIC, FRB, OCC and OTS as well as the reasons for these discrepancies. Appendix Two contains the differences in accounting and reporting standards among the banking and thrift agencies.

Capital Standards

The three banking agencies have implemented a common regulatory framework that sets forth two minimum capital standards—a minimum leverage capital requirement and a minimum risk-based capital requirement. In addition to common minimum standards, the definitions of capital used by the banking agencies have generally been consistent with the exception of certain differences in the treatment of intangible assets.

The leverage and risk-based capital requirements only represent minimum standards and the FDIC generally expects banks that it supervises to maintain capital levels well above these minimums, particularly banks that are expanding or experiencing unusual or high levels of risk.

Leverage Capital Requirement

Ever since 1985, the banking agencies have employed a capital requirement that establishes a minimum ratio of capital as a percent of total assets (leverage ratio). This leverage capital framework initially required banks to maintain a level of primary capital equal to at least 5.5 percent of total assets and total capital of at least 6 percent. However, in February 1991, the FDIC adopted a revised minimum leverage capital requirement for state nonmember banks.

The FDIC's revised leverage capital rule, which became effective April 10, 1991, replaces the primary and total capital definitions with a single, more narrow definition of capital that is based solely on Tier 1 (or core) capital. Among the items excluded from the more narrow definition is the bank's allowance for loan and lease losses. In most instances, a bank's Tier 1 capital is equal to the amount of common equity capital minus certain intangible assets such as goodwill. Under the revised rule, the most highly-rated banks in terms of safe and sound operation (i.e., those rated a composite "1" under the CAMEL system used by the three federal banking agencies) that are not anticipating or experiencing significant growth are required to meet a minimum Tier 1 leverage capital ratio of at least 3 percent. All other state nonmember banks are required to meet a minimum Tier 1 leverage capital ratio of at least 100 to 200 basis points above the 3 percent level—that is, an absolute minimum leverage ratio of at least 4 percent.

During the second half of 1990, similar leverage capital requirements were adopted by the OCC for national banks and by the FRB for state member banks and bank holding companies. The OCC and FRB leverage ratio requirements also set forth a minimum Tier 1 leverage capital ratio for the most highly-rated banks of 3 percent and an additional cushion of 100 to 200 basis points for all other institutions.

As initially required by FIRREA, the OTS adopted in 1989 a 1.5 percent tangible and a 3 percent core capital to total assets leverage standard. However, consistent with FIRREA, the OTS also has proposed revisions to its existing 3 percent core leverage capital requirement for savings associations so that its minimum leverage capital standard will be at least as stringent as the revised leverage capital requirement that the OCC now applies to national banks. In addition, although goodwill is generally deducted in calculating a savings association's tangible and core capital levels, the OTS allows limited amounts of grandfathered "qualifying supervisory goodwill" to be included in the calculation of core capital during a five-year phase-out period that expires on January 1, 1995.

Risk-Based Capital Requirement

In 1989, the banking agencies adopted a risk-based capital framework based upon the July 1988 Capital Accord developed by the Basle Supervisors' Committee and endorsed by the central bank governors of the G–10 countries. Under the risk-based capital framework, banks are currently expected to meet a minimum ratio of total qualifying capital to risk-weighted assets of 7.25 percent. Effective at year-end 1992, this minimum risk-based capital ratio will be raised to 8 percent, of which at least one-half (or four percentage points) must be comprised of Tier 1 capital.

In addition to identical ratios, the risk-based framework implemented by the banking agencies generally includes a common definition of capital and a uniform system of risk weights and categories. Nevertheless, some technical differences in language and interpretation exist among the agencies' risk-based capital guidelines. As required by FIRREA, the OTS also adopted in 1989 a risk-based capital standard for savings associations that generally parallels the risk-based standards of the banking agencies but which is different in some respects.

The differences in the capital standards among the banking agencies and between the banking agencies and the OTS are set forth in Appendix One. In addition to the leverage capital ratio difference mentioned above, the major differences between the capital standards of the banking agencies on the one hand and the OTS on the other include the capital treatment for subsidiaries, intangible assets, and assets sold with recourse. The staffs of the banking agencies and the OTS meet regularly to address differences and inconsistencies in their respective capital standards.

Accounting and Reporting Standards

Over the years, the banking agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have developed uniform Reports of Condition and Income (Call Reports) for all commercial banks and FDIC-supervised savings banks. The reporting standards followed by the banking agencies are substantially consistent with generally accepted accounting principles (GAAP) as they are applied by commercial banks. The uniform Call Report serves as the basis for calculating risk-based capital and leverage ratios, as well as being used for other regulatory purposes. Thus, differences in accounting and reporting standards do not exist among commercial banks and FDIC-supervised savings banks.

OTS requires each thrift institution to file the Thrift Financial Report (TFR), which is consistent with GAAP as it is applied by thrifts. However, the TFR differs in material respects from the bank Call Report. Certain of these differences arise from differences in GAAP as applied by banks and thrifts and the few areas in which the banking agencies have adopted regulatory reporting standards at variance with GAAP, as it is applied by banks. However, there are also significant differences in the required information and its form of presentation on the two reports so that the required reports are significantly different.

Simplification and Reduction of Differences in Accounting and Reporting Standards

The federal banking agencies and OTS continue to study ways to reduce differences in accounting and reporting standards between the banking agencies and OTS and between GAAP for banks and thrifts. In the latter regard, the FDIC has requested the Financial Accounting Standards Board (FASB) and the American Institute of Certified Public Accountants (AICPA) to consider eliminating the differences in GAAP as applied by thrifts and by banks. The AICPA has exposed a draft statement of position on accounting for foreclosed assets, which if adopted, would eliminate the current differences in treatment under GAAP of these assets by banks and thrifts. In addition, the FASB is working on a project on loan impairment, the results of which are expected to apply equally to banks and thrifts. In addition, the banking agencies continue to look for ways in which the differences between the Call Report standards and GAAP can be eliminated, consistent with the agencies' supervisory responsibilities.

At the same time, the agencies continue working toward the goal of eliminating differences in reporting by banks and thrifts. The banking agencies and OTS have been cooperating on many accounting and reporting initiatives recently, including the Joint Statements of Policy dated March 1, 1991. These statements provided uniform guidance that is consistent with GAAP for the reporting of nonaccrual and restructured assets. As a result, all four agencies now generally use the same definitions and interpretations for the reporting of past due and nonaccrual assets for purposes of the Call Reports and the TFR. In addition, the federal banking agencies and OTS proposed uniform guidance governing assets held for trading or for sale and high risk mortgage derivative products and have requested public comment on the supervisory treatment of recourse arrangements. Both of these initiatives may potentially result in rules that would conform the reporting practices of the banking agencies and OTS in these areas.

Under the auspices of the FFIEC's Task Force on Supervision, a committee of agency staff members from the three banking agencies, OTS, the National Credit Union Administration, and the Farm Credit Administration (ex officio) has been meeting to review the different approaches each agency takes toward the allowance for loan and lease losses (ALLL) and consider the merits of developing an interagency formula for a minimum ALLL for all institutions. As one of its initial recommendations, the committee suggested that the FFIEC authorize it to develop an interagency policy on the ALLL.

The Task Force on Supervision has also formed an interagency committee to review the policies and methods of real estate valuation used by each agency. The committee will attempt to determine common definitions for the terms used and to agree on examples of appropriate valuation methods of specific commercial real estate projects. The Task Force hopes to come to interagency agreement on appropriate real estate valuation methods.

More uniform reporting by all institutions is a long-term goal of the FDIC and would undoubtedly simplify accounting and reporting standards for all depository institutions in the future. The federal banking agencies have held preliminary discussions with OTS and the banking agencies are prepared to work to resolve differences between the Call Report and the Thrift Financial Report. A summary of the differences in accounting and reporting standards between the bank Call Report and the TFR and those interpretations resolved in the past year are presented in Appendix Two.

Appendix One—Summary of Differences in Capital Standards Among Federal Banking and Thrift Supervisory Agencies

The three federal banking agencies have substantially similar leverage and risk-based capital standards. Most of the differences described below represent inconsistencies between the capital standards used by the banking agencies and those employed by the OTS.

In addition to these differences in standards, there are differences arising from certain statutory requirements in the way the banking agencies and OTS deal with institutions that fail to maintain adequate levels of capital. OTS is required by law to prohibit the asset growth of, and issue capital directives to, savings associations which are not in compliance with their statutory requirements. The banking agencies are not subject to these statutory requirements. However, the banking agencies, as a matter of course, generally take similar remedial action in carrying out their supervisory responsibilities with respect to institutions which fail to meet their capital requirements.

In general, the three federal banking agencies have deducted goodwill in calculating bank regulatory capital ratios. The banking agencies view the leverage and risk-based capital requirements as minimum standards and most banking organizations are expected to operate with capital levels well above the minimums, particularly those institutions that are expanding or experiencing unusual or high levels of risk.

Leverage Capital Requirement

In 1985, the three federal banking agencies established a minimum 5.5 percent primary capital and 6 percent total capital leverage (capital-to-total assets) standard. However, in 1991, the FDIC substantially revised its part 325 leverage capital rule. In summary, the revised rule:

(1) Replaces the primary and total capital definitions with a single, narrower definition for leverage capital that is based solely on Tier 1 (or core) capital;

(2) Establishes a minimum tier 1 leverage capital requirement of at least 3 percent for the most highly-rated banks (i.e., those with a composite CAMEL rating of 1) that are not anticipating or experiencing any significant growth and that meet certain other conditions—all other state nonmember banks need to meet a minimum leverage capital ratio that is at least 100 to 200 basis points above this minimum (i.e., an absolute minimum leverage ratio of not less than 4 percent);

(3) Provides that state nonmember banks with capital levels below the minimum leverage capital requirement will be deemed to be engaging in an unsafe or unsound practice unless they have submitted, and are in compliance with, a capital plan approved by the FDIC;

(4) Replaces the previous 3 percent leverage test, which was based on primary capital, for determining when a depository institution is in an unsafe or unsound condition pursuant to section 8(a) of the Federal Deposit Insurance Act, with a new 2 percent "unsafe or unsound condition" leverage test based solely on Tier 1 capital; and

(5) Adds to part 325 a number of references concerning certain supervisory responsibilities imposed on the FDIC by FIRREA for determining the safety and soundness and capital adequacy of savings associations.

The FDIC's revised leverage capital regulation became effective April 10, 1991. The revised minimum leverage capital ratio requirements (i.e., the 3 percent minimum for the most highly-rated banks and an additional cushion of at least 100 to 200 basis points for all other institutions) is similar to the revised minimum leverage standards that were adopted by the OCC and the FRB in the second half of 1990.

The OTS has a three percent core capital and a 1.5 percent tangible capital leverage requirement for savings associations. Goodwill is generally deducted in calculating a savings association's tangible and core capital levels. However, limited amounts of "qualifying supervisory goodwill" acquired on or before April 12, 1989, can be included in the calculation of core capital during a five-year phase-out period. For periods prior to January 1, 1992, the amount of qualifying supervisory goodwill included in the calculation of core capital cannot exceed 1.5 percentage points (i.e., one-half of the minimum 3 percent leverage ratio requirement). This allowable level phases down to zero, effective January 1, 1995.

Consistent with the requirements of FIRREA, the OTS is in the process of revising its leverage standard for savings associations so that its minimum leverage standard will be at least as stringent as the revised leverage standard that OCC applies to national banks.

Risk-Based Capital Requirement

In 1989, the three federal banking agencies adopted risk-based capital standards consistent with the July 1988 Basle Accord. These standards require minimum risk-based capital (Tier 1 plus Tier 2) for all banking oganizations equal to 7.25 percent of risk-adjusted assets as of year-end 1990 and 8 percent as of year-end 1992. Risk-adjusted assets are calculated by assigning risk weights of 0, 20, 50 and 100 percent to broad categories of assets and off-balance sheet items based upon their relative credit risks. As is the case with leverage ratios, the banking agencies view the risk-based requirement as a minimum ratio. Under the auspices of the Basle Supervisors' Committee, and domestically among themselves, U.S. bank regulatory authorities are attempting to develop ways of quantifying the risks associated with changes in interest rates, equity investments, traded debt securities, and foreign exchange activities to supplement the basic risk-based capital framework.

OTS has adopted a risk-based capital standard which, in many respects, is similar to the framework adopted by the banking agencies. The OTS standard currently requires a minimum risk-based capital ratio equal to 7.2 percent of risk-adjusted assets and this percentage is slated to increase to 8 percent by year-end 1992. OTS has also issued a proposal for incorporating an additional element for interest rate risk into its risk-based capital requirement.

Equity Investments

To the extent that commercial banks and FDIC-supervised savings banks are allowed to invest in equity securities under applicable federal or state law, such investments are assigned to the 100 percent risk-weight category, for risk-based capital purposes, by all three of the federal banking agencies.

The OTS risk-based capital standards require that thrift institutions deduct equity investments from capital over a

five-year phase-in period, which ends on July 1, 1994.

FSLIC/FDIC-Covered Assets

The federal banking agencies generally place FSLIC/FDIC-covered assets (assets subject to guarantee arrangements by the FSLIC or FDIC) in the 20 percent risk-weight category. However, the banking agencies have permitted limited exceptions on a case-by-case basis in several large bank assistance transactions.

The OTS places these assets in the zero percent risk-weight category.

Repossessed Assets and Assets More Than 90 Days Past Due

The federal banking agencies require that foreclosed real estate be written down to fair value (see appendix 2, "Specific Valuation Allowances for, and Charge-Offs of, Troubled Real Estate Loans not in Foreclosure" and "Valuation of Foreclosed Real Estate" for further details) and assigned to the 100 percent risk weight category. Assets 90 days or more past due, including mortgages on 1 to 4 family residential properties, are assigned to the 100 percent risk weight category. Consistent with the Basle framework, the 100 percent risk weight category is the highest risk category under the risk-based capital guidelines of the banking agencies. However, the volume of these items is a subjective factor used in determining how much capital over the minimum may be necessary.

The OTS has created a 200 percent risk-weight category to which repossessed assets and assets more than 90 days past due are assigned. An exception exists for 1 to 4 family residential property mortgages more than 90 days past due, which are assigned to the 100 percent risk weight category.

Limitation on Subordinated Debt and Limited Life Preferred Stock

The federal banking agencies limit subordinated debt and intermediate-term preferred stock that may be treated as part of Tier 2 capital to an amount not to exceed 50 percent of Tier 1 capital. In addition, all maturing capital instruments must be discounted by 20 percent each year of the five years before maturity. The banking agencies adopted this approach in order to emphasize equity versus debt in the assessment of capital adequacy.

The OTS has no limitation on the ratio of maturing capital instruments as part of Tier 2. Also, for all maturing instruments issued on or after November 7, 1989 (those issued before are grandfathered with respect to the discounting requirement), thrifts have the option of using either (a) the discounting approach used by the banking regulators, or (b) an approach which allows for the full inclusion of all such instruments provided that the amount maturing in any one year does not exceed 20 percent of the thrift's total capital.

Subsidiaries

The federal banking agencies consolidate all significant majority-owned subsidiaries of the parent organization. The purpose of this practice is to assure that capital requirements are related to all of the risks to which the bank is exposed. For subsidiaries which are not consolidated on a line-for-line basis, their balance sheets may be consolidated on a pro-rata basis, bank investments in such subsidiaries may be deducted entirely from capital, or the investments may be risk-weighted at 100 percent depending upon the circumstances. For example, the FDIC deducts investments in, and unsecured advances to, securities subsidiaries of state nonmember banks established pursuant to § 337.4 of the FDIC regulations. Similarly, in accordance with § 325.5(f) of the FDIC regulations, investments in and extensions of credit to certain mortgage banking subsidiaries are also deducted in computing the parent bank's capital. These options, with respect to the consolidation or "separate capitalization" of subsidiaries for the purpose of determining the capital adequacy of the parent organization, provide the banking agencies with the flexibility necessary to ensure that adequate capital is being provided commensurate with the actual risks involved. Such flexibility is essential to ensure a realistic assessment of an institution's capital adequacy.

Under OTS capital guidelines, a distinction, mandated by FIRREA, is drawn between subsidiaries engaged in those activities that are permissible for national banks and subsidiaries engaged in "impermissible" activities for national banks. Subsidiaries of thrift institutions that engage only in permissible activities are consolidated on a line-for-line basis, if majority-owned, and on a pro rata basis, if ownership is between 5 percent and 50 percent. As a general rule, investments in, including loans to, subsidiaries that engage in impermissible activities are deducted in determining the capital adequacy of the parent. However, for subsidiaries which were engaged in impermissible activities prior to April 12, 1989, investments in, including loans to, such subsidiaries that were outstanding as of that date are garndfathered and will be phased-out of capital over a five-year transition period that expires on July 1, 1994. During this transition period, investments in subsidiaries engaged in impermissible activities which have not been phased out of capital are to be consolidated on a pro rata basis.

Qualifying Multifamily Mortgage Loans

The banking agencies place multifamily residential mortgage loans (five units or more) in the 100 percent risk-weight category along with most other commercial loans since the risks in both assets are similar.

The OTS allows certain multifamily residential mortgage loans (e.g., those secured by buildings with 5–36 units, a maximum 80 percent loan to value ratio, and 80 percent occupancy rate) to qualify for the 50 percent risk-weight category.

Nonresidential Construction and Land Loans

The banking agencies assign loans for real estate development and construction purposes to the 100 percent risk weight category.

OTS generally assigns these loans to the same 100 percent risk category. However, if the amount of the loan exceeds 80 percent of the fair value of the property, the excess portion is deducted from capital in accordance with the same five-year phase-in arrangement as described above for "Equity Investments."

Mortgage-Backed Securities (MBS)

The federal banking agencies, in general, place privately-issued MBS in either the 50 percent or 100 percent risk-weight category, depending upon the appropriate risk category of the underlying assets. However, privately-issued MBS, collateralized by government agency or government-sponsored agency securities, are generally assigned to the 20 percent risk weight category.

The OTS assigns privately-issued high-quality mortgage-related securities (also known as "SMMEA" securities) to the 20 percent risk weight category. These are, generally, privately-issued MBS with AA or better investment ratings.

At the same time, the banking agencies and the OTS automatically assign to the 100 percent risk weight category certain mortgage-backed securities, including interest-only strips, residuals, and similar instruments that can absorb more than their pro rata share of loss. The FDIC, in conjunction with the other banking agencies and the

OTS, is in the process of developing more specific guidance as to the types of "high risk" mortgage-backed securities that meet this definition.

Intangible Assets

The banking agencies do not allow goodwill to be included in capital for commercial banks and FDIC-supervised savings banks.

Pursuant to FIRREA, the OTS allows "qualifying supervisory goodwill" acquired on or before April 12, 1989, to be included as part of core capital through year-end 1994. Supervisory goodwill is goodwill acquired in an acquisition where the fair value of the assets was less than the fair value of the liabilities at the acquisition date or goodwill acquired in the acquisition of a problem institution. However, in accordance with FIRREA and Section 18(n) of the Federal Deposit Insurance Act, goodwill acquired after April 12, 1989, cannot be included in calculating regulatory capital under the OTS capital rules. This explicit prohibition against recognizing goodwill also applies to the three federal banking agencies and the capital rules they have adopted for banking organizations.

The banking agencies and the OTS require that all other intangible assets must meet a three-part test which covers the reliability of cash flows, the existence of active and liquid markets, and the separability of the intangible asset from the bulk of the institution's other assets in order to be eligible for inclusion in capital.

The OCC also imposes a limit of 25 percent of Tier 1 capital on the amount of qualifying intangible assets, including purchased mortgage servicing rights, which can be included in the risk-based capital calculation.

The FRB expects banks to avoid an overreliance on any intangible assets, including purchased mortgage servicing rights, within capital. In addition to excluding goodwill, the FRB gives close scrutiny to any other intangible assets exceeding 25 percent of Tier 1 capital, and generally would expect intangibles not to exceed this threshold. Furthermore, the FRB deducts all intangible assets from a banking organization's capital on a case-by-case basis whenever that organization is undertaking expansion, engaging in new activities, or experiencing unusual risks.

Currently, the FDIC generally deducts all intangible assets, except for purchased mortgage servicing rights, in calculating the leverage and risk-based capital ratios of banks and FDIC-supervised savings banks. Further, effective January 10, 1991, the FDIC limits the amount of purchased mortgage servicing rights that state nonmember banks may include in their capital calculations to no more than 50 percent of core capital. In addition, the FDIC rule sets forth additional criteria for the valuation and recording of these intangible assets, the grandfathering of existing purchased mortagage servicing rights, and an exemption for purchased servicing rights held in a separately captialized mortgage banking subsidiary.

Furthermore, in accordance with FIRREA and section 5(t)(4)(C) of the revised Home Owner's Loan Act of 1933, the FDIC's decision in this matter also will affect OTS-supervised savings institutions. In this regard, the FDIC's rule directly limits the amount of purchased mortgage servicing rights that savings associations can include in tangible capital under the OTS capital rules to no more than 100 percent of tangible capital. Also, the OTS has proposed a revision to its capital standards that would additionally limit the amount of purchased mortagage servicing rights that savings associations can recognize in core capital for leverage and risk-based capital purposes to no more than the "50 percent of core capital" limit that the FDIC already applies to its state nonmember banks. In addition, as required by FIRREA, and consistent with the FDIC rule, the OTS permits thrift institutions to include only 90 percent of the fair market value of purchased mortgage servicing rights in the calculation of the tangible capital, core (leverage) capital and risk-based capital ratios.

Under the OTS rule, the amount of any other identifiable intangible assets that meet a qualifying three-part test can only be included in core capital for leverage and risk-based capital purposes up to a limit of 25 percent of core capital.

Assets Sold with Recourse

As a general rule, the banking agencies require full leverage an risk-based capital charges on asset sold with recourse, even when the recourse is limited. The exceptions to this rule (for leverage capital purposes only) pertain to pools of 1 to 4 family residential mortgages and to certain farm mortgage loans (see Appendix 2, "Sales of Assets With Recourse" for further details).

For risk-based capital purposes, the OTS limits the capital required on assets sold with limited recourse to the lesser of the amount of recourse or the actual amount of capital that would otherwise be required against that assets, i.e., the normal capital charge.

Some securitized asset arrangements involve the issuance of senior and subordinated classes of securities. When a bank originates such a transaction and retains a subordinated piece, the banking agencies require that capital be maintained against the entire amount of the asset pool. When a bank acquires a subordinated security in a pool of assets that it did not originate, the banking agencies assign the investment in the subordinated piece to the 100 percent risk weight category.

OTS requires that capital be maintained against the entire amount of the asset pool in both of the situations described in the preceding paragraph. Additionally, the OTS applies a capital charge to the full amount of assets being serviced when the servicer is required to absorb credit losses on the assets being serviced.

In 1990, the federal bank and thrift supervisory agencies, under the auspices of the Federal Financial Institutions Examination Council, issued for public comment a fact-finding paper pertaining to the entire range of issues pertaining to recourse arrangements. These issues include the definition of "recourse" and the appropriate reporting and capital treatments to be applied to recourse arrangements, including so-called recourse servicing arrangements and limited recourse. The objective of this effort is to develop appropriate and uniform treatment of recourse arrangements for capital adequacy, other regulatory, and reporting purposes. The comments received were very extensive and generaly illustrated the extreme complexity of the subject. In view of the project's significance and complexity, the FFIEC in December 1990 decided to narrow the scope of the initial phase of the recourse project to credit-related risks, including the appropriate treatment of credit-related recourse arrangements that involve limited recourse or that support a third party's assets.

Agricultural Loan Loss Amortization

In the computation of regulatory capital, those banks accepted into the agricultural loan loss amortization program pursuant to Title VIII of the Competitive Equality Banking Act of 1987 may defer and amortize losses incurred on agricultural loans between January 1, 1984 and December 31, 1991. The unamortized portion of any losses are included as an element of Tier 2 capital under the FDIC's risk-based capital framework. The program also applies to losses incurred between January 1, 1983 and December 31, 1991, as a result of reappraisals and sales of

agricultural other real estate owned and agricultural personal property. Thrifts are not eligible to participate in the agricultural loan loss amortization program established by this statute.

Treatment of Junior Liens on One to Four Family Properties

In some cases, a bank may make two loans on a single residential property, one loan secured by a first lien, the other by a second line. The FDIC and FRB view these two transactions as a single loan for purposes of determining whether the loan secured by the first lien has been prudently underwritten. The loan secured by the first lien could be assigned to the 100 percent risk weight category, if, in the aggregate, the two loans exceeded a prudent loan-to-value ratio. In such a situation, the loan secured by the first lien would not qualify for the 50 percent risk weight. This approach is intended to avoid possible circumvention of the capital requirement and capture the risks associated with the combined transactions.

The OCC and OTS generally assign the loan secured by the first lien to the 50 percent risk weight category and the loan secured by the second lien to the 100 percent risk weight category.

Phase-in Requirements

The banking agencies, consistent with the Basle Accord, have adopted transition rules for a two year period beginning December 31, 1990. During this period, banks will be required to maintain at least 7.25 percent risk-based capital, and may take advantage of certain transitional rules. For example, up to 10 percent of Tier 1 capital can be comprised of Tier 2 capital elements through the end of 1992. On December 31, 1992, the transition rules expire and all banks must maintain at least 8 percent risk-based capital.

OTS was required by statute to implement its risk-based capital guidelines by December 7, 1989. FIRREA also provides for a different set of transition rules than those afforded banks, although the ultimate date for full implementation is approximately the same. Thrifts are required to maintain 80 percent of the 8 percent risk-based capital standard from December 7, 1989 to December 7, 1990; 90 percent from December 31, 1990 to December 30, 1992; and 100 percent thereafter.

Pledged Deposits and Nonwithdrawable Accounts

Instruments such as pledged deposits, nonwithdrawable accounts, income capital certificates (ICCs), and mutual capital certificates (MCCs) do not exist in the banking industry and are not included in the capital guidelines of the banking agencies.

The capital guidelines of OTS permit thrift institutions to include pledged deposits and nonwithdrawable accounts that meet OTS criteria as well as ICCs and MCCs as capital.

Mutual Funds

Rather than looking to a mutual fund's actual holdings, the banking agencies assign all of a bank's holdings in a mutual fund to the risk category appropriate to the highest risk asset that a particular mutual fund is permitted to hold under its operating rules. Thus, the banking agencies take into account the maximum degree of risk to which a bank may be exposed when investing in a mutual fund because the composition and risk characteristics of its future holdings cannot be known in advance.

OTS applies a capital charge appropriate to the riskiest asset that a mutual fund is actually holding at a particular time. In addition, OTS guidelines also permit investments in mutual funds to be allocated on a pro-rata basis in a manner consistent with the actual composition of the mutual fund.

Appendix Two—Summary of Differences in Reporting Standards Among Federal Banking and Thrift Supervisory Agencies

Under the Federal Financial Institutions Examination Council, the three federal banking agencies have developed uniform reporting standards for commercial banks which are used in the preparation of the Reports of Condition and Income (Call Report). The FDIC has also applied these uniform Call Report standards to savings banks under its supervision. The income statement and balance sheet accounts presented in the Call Report are used by the federal bank supervisory agencies for off-site monitoring of the capital adequacy of banks and for other regulatory, supervisory, surveillance, analytical, and general statistical purposes. The reporting standards set forth for the Call Report are based almost entirely on generally accepted accounting principles (GAAP) for banks, and, as a matter of policy, deviate only in those instances where statutory requirements or overriding supervisory concerns warrant a departure from GAAP. Thus, insofar as the federal banking agencies are concerned, uniform accounting standards for regulatory and supervisory purposes have been established.

The OTS has developed and maintains its own separate reporting scheme for the thrift institutions under its supervision. The reporting form used by savings institutions, known as the Thrift Financial Report (TFR), is based on GAAP as applied by thrifts, which differs in some respects from GAAP for banks.

Specific Valuation Allowances for, and Charge-off of, Troubled Real Estate Loans not in Foreclosure

The banking agenices generally consider real estate loans which lack acceptable cash flow or other ready sources of repayment, other than the collateral, as "collateral dependent." When a real estate loan is considered to be collateral dependent and the fair value of the collateral has declined below the loan balance, charge-off or the establishment of a specific valuation allowance is made to reduce the value of the loan to the fair value of the collateral. Fair value is generally determined by a current appraisal. The banking agencies believe that this approach accurately reflects the amount of recovery a financial institution is likely to receive if it is forced to foreclose on the underlying collateral. This approach, followed by the banking agencies, is basically consistent with GAAP for banks.

OTS generally requires specific valuation allowances for troubled real estate loans based on the estimated net realizable value (NRV) of the collateral. NRV represents the estimated future sales price reduced by certain expenses and direct holding costs, including the cost of capital. Thus, NRV is based on the expected cash flows derived from the property discounted by the institution's cost of capital. NRV generally exceeds fair value. This difference is attributable to differences in GAAP as practiced by banking organizations and thrifts.

OTS has recently informed the banking agencies that it will propose a new policy for the valuation of troubled assets that will focus on the use of fair value rather than the NRV of the collateral. The policy will be substantially similar to the banking agencies' policy

General Valuation Allowances for Troubled Real Estate Loans

The banking agencies expect an institution's general valuation allowance to be sufficient to cover an estimate of inherent losses on all loans in the portfolio, including the remaining balances of individual loans which have been partially charged-off (or where permitted, for which specific valuation allowances have been established). The

banking agencies believe that this approach appropriately reflects the risk of additional loss from error in the specific loss estimates. The general valuation allowance required for banking organizations by the banking agencies and under GAAP are basically consistent.

Like the banking regulators, OTS now expects the general valuation allowance for loan and lease losses to be sufficient to cover estimated losses inherent in all loans in the portfolio, including the remaining balances of individual loans where a loss classification has been provided.

Valuation of Foreclosed Real Estate

The banking agencies require that foreclosed real estate be valued at the lower of the recorded amount of the loan or the fair value of the property at the date of foreclosure. The banking regulators usually require additional write-downs of other real estate owned to fair value when fair value declines after foreclosure. The approach followed by the banking agencies is basically consistent with GAAP for banks.

OTS also requires foreclosed real estate to be valued at the lower of the recorded amount of the loan or the fair value of the property at the date of foreclosure. However, valuation allowances for real estate owned after the acquisition date are generally based on the NRV of the property using a cost of capital discount rate, which generally provides an NRV that is greater than fair value. Under the risk-based capital guidelines of OTS, real estate owned (i.e., foreclosed property) is risk-weighted at 200 percent; that is, it receives double the capital charge that standard risk assets receive. OTS has informed the banking agencies that it will propose a new policy that focuses on the use of fair value rather than NRV. When adopted, real estate owned will be in the 100 percent risk-weight category for risk-based capital purposes.

Futures Contracts, Forwards, and Standby Commitments

The banking agencies, as a general rule, do not permit the deferral of losses on futures, forward, and standby contracts whether or not they are used for hedging purposes. All charges in market value of futures and forward contracts are reported in current period income, and standby contracts must be reported at the lower of cost or market value. The banking agencies adopted this reporting standard as a supervisory policy prior to the adoption of FASB Statement No. 80, which permits hedge or loss deferral accounting under certain circumstances. However, hedge accounting in accordance with FASB Statement No. 80 is permitted by the banking agencies for futures and forward contracts used in mortgage banking operations.

OTS practice is to follow FASB Statement No. 80 for futures contracts. In accordance with this statement, when hedging criteria are satisfied, the accounting for the futures contract is related to the accounting for the hedged item. Changes in the market value of the futures contract are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. Such reporting can result in deferred losses which would be reflected as assets on the thrift's balance sheet in accordance with GAAP.

Excess Servicing Fees

As a general rule, the banking agencies do not follow GAAP for excess servicing fees, but require a more conservation treatment. Excess servicing arises when loans are sold with servicing retained and the stated servicing fee rate is greater than a normal servicing fee rate. With the exception of sales of pools of residential mortgages for which the banking agencies' approach is consistent with FASB Statement No. 65, excess servicing fee income in banks must be reported as realized over the life of the transferred asset.

In contrast, OTS allows the present value of the future excess servicing fee to be treated as an adjustment to the sales price for purposes of recognizing gain or loss on the sale. This approach is consistent with FASB Statement No. 65.

In-Substance Defeasance of Debt

The banking agencies do not permit banks to report the institution's defeasance of their liabilities in accordance with FASB Statement No. 76. Defeasance involves a debtor irrevocably placing risk-free monetary assets in a trust established solely for satisfying the debt. In order to qualify for this treatment, the possibility that the debtor will be required to make further payments on the debt, beyond the funds placed in the trust, must be remote. With defeasance, the debt is netted against the assets placed in the trust, a gain or loss results in the current period, and both the assets placed in the trust and the liability are removed from the balance sheet. However, for Call Report purposes, banks must continue to report defeased debt as a liability and the securities contributed to the trust must continue to be reported as assets. No netting is permitted, nor is any recognition of gains or losses on the transaction allowed. The banking agencies have not adopted FASB Statement No. 76 because of uncertainty regarding the irrevocability of trusts established for defeasance purposes. Furthermore, defeasance would not relieve the bank of its contractual obligation to pay depositors or other creditors.

OTS practice is to follow FASB Statement No. 76.

Sales of Assets with Recourse

In accordance with FASB Statement No. 77, a transfer of receivables with recourse is recognized as a sale if: (1) The transferor surrenders control of the future economic benefits, (2) the transferor's obligation under the recourse provisions can be reasonably estimated, and (3) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

The practice of the banking agencies is generally to allow commercial banks to report transfers of receivables with recourse as sales only when the transferring institution: (1) Retains no risk of loss from the assets transferred, and (2) has no obligation for the payment of principal or interest on the assets transferred. As a result, virtually no transfers of assets with recourse can be reported as sales. However, this rule has not historically applied to the transfer of 1 to 4 family or agricultural mortgage loans under any one of the Government programs (GNMA, FNMA, FHIMC and Farmer Mac). Transfers of mortgages under these programs are treated as sales for Call Report purposes. Furthermore, private transfers of mortgages are also reported as sales if the transferring institution retains only an insignificant risk of loss on the assets transferred. However, under the risk-based capital framework, the seller's obligation under any recourse provision resulting from transfers of mortgage loans under the Government programs or in private transfers that qualify as sales is viewed as an off-balance sheet exposure that will be assigned a 100 percent conversion factor. Thus, for risk-based capital purposes, capital is generally required to be held for any recourse obligation associated with such transactions.

OTS policy is to follow FASB Statement No. 77. However, in the calculation of risk-based capital under OTS guidelines, off-balance sheet recourse obligations are converted at 100 percent. This effectively negates the sale treatment recognized on a GAAP basis for risk-based capital purposes, but not for leverage capital purposes.

Dated at Washington, DC, this 28th day of August, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-21510 Filed 9-6-91 8:45 am]

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FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of July 2-3, 1991

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on July 2-3, 1991.[1] The Directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity has begun to recover from the recent recession. The unemployment rate rose to 6.9 percent in May, but total nonfarm payroll employment edged up and the average workweek posted a sizable gain. Manufacturing output has risen in recent months, led by appreciable increases in assemblies of motor vehicles. Consumer spending has been bolstered in part by an upturn in personal income. An increase in orders points to a firming in demand for business equipment, but nonresidential construction remains weak. Housing starts rose over April and May. The nominal U.S. merchandise trade deficit in April was somewhat below the average rate in the first quarter. Increases in consumer prices have been small in recent months.

Most interest rates have risen slightly since the Committee meeting on May 14. The trade-weighted value of the dollar in terms of the other G-10 currencies increased substantially on balance over the intermeeting period.

M2 grew at a moderate pace over May and June, while M3 changed little. For the year thus far, expansion of M2 and M3 has been in the middle portion of the Committee's ranges.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee reaffirmed at this meeting the ranges it had established in February for growth of M2 and M3 of 2-1/2 to 6-1/2 percent and 1 to 5 percent, respectively, measured from the fourth quarter of 1990 to the fourth quarter of 1991. The monitoring range for growth of total domestic nonfinancial debt also was maintained at 4-1/2 to 8-1/2 percent for the year. For 1992, on a tentative basis, the Committee agreed to use the same ranges as in 1991 for growth in each of the monetary aggregates and debt, measured from the fourth quarter of 1991 to the fourth quarter of 1992. With regard to M3, the Committee anticipated that the ongoing restructuring of thrift depository institutions would continue to depress the growth of this aggregate relative to spending and total credit. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. Depending upon progress toward price stability, trends in economic activity, the behavior of the monetary aggregates, and developments in foreign exchange and domestic financial markets, somewhat greater reserve restraint or somewhat lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from June through September at annual rates of about 5-1/2 and 3 percent, respectively.

By order of the Federal Open Market Committee, August 30, 1991.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 91-21455 Filed 9-6-91; 8:45 am]

BILLING CODE 6210-01-F

[1]Copies of the Record of policy actions of the Committee for the meeting of July 2-3, 1991, are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Public Meeting on Clinical Practice Guidelines for Visual Impairment Due to Cataracts in the Aging Eye; Republication

Editorial Note: FR Doc. 91-21038 which was originally published at page 43785 in the issue of Wednesday, September 4, 1991. In that publication, the latter part of the document was omitted. The correction document is republished below in its entirety.

A public meeting will be held on clinical practice guidelines for the diagnosis and treatment of visual impairment due to cataracts in the aging eye. The guidelines are under development by a panel of experts and health care consumers, arranged for by the Agency for Health Care Policy and Research. A Notice announcing the development of seven sets of clinical practice guidelines and inviting written comments was published in the **Federal Register** on August 28, 1990 (55 FR 35185).

In addition to the solicitation of written material through the **Federal Register**, a series of public meetings is being held to provide an opportunity for interested parties to contribute relevant information and comments concerning the particular guidelines under development.

A public meeting to address guidelines for visual impairment due to cataracts in the aging eye will be held on September 25, as follows:

September 25, 1991, 9 a.m. to Noon—Hyatt Regency Hotel, 2799 Jefferson Davis Highway, Arlington, Virginia 22202, (703) 418-1234.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), enacted on December 19, 1989, added a new Title IX to the Public Health Service Act (the Act) (42 U.S.C. 299-299c-6), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services.

Section 911 of the Act (42 U.S.C. 299b) established, within AHCPR, the Office of the Forum for Quality and Effectiveness in Health Care (the Forum). Through this office, AHCPR is arranging for the development and periodic review and updating of clinically relevant guidelines that may be used by physicians, educators, other health care practitioners, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912(d) of the Act (42 U.S.C. 299b-1(d)) provides that the first guidelines, standards, performance measures, and review criteria developed should:

1. Account for a significant portion of expenditures under the Medicare program, and have a significant variation in the frequency or the type of treatment provided; or

2. Otherwise meet the needs and priorities of the Medicare program.

Section 914 of the Act (42 U.S.C. 299b-3) lists factors to be considered in establishing priorities for guidelines, including the extent to which the proposed guidelines would:

1. Improve methods of prevention, diagnosis, treatment and clinical management, and thereby benefit a significant number of individuals;

2. Reduce significant variations among clinicians in the particular services and procedures untilized in making diagnoses and providing treatments (and potentially produce savings in health care expenditures); and

3. Reduce clinically significant variations in the outcomes of health care services and procedures.

Based on the statutory criteria, consultation with the Health Care Financing Administration (in accordance with 42 U.S.C. 1320b–12), studies conducted by the Institute of Medicine, availability of reliable research data, and a high degree of professional consensus, the following topics were selected in 1990 for guideline development:

1. Visual Impairment due to Cataract in the Aging Eye.
2. Diagnosis and Treatment of Benign Prostatic Hyperplasia.
3. Urinary Incontinence in the Adult.
4. Risk Assessment, Prevention, and Early Intervention in Management of Pressure Sores.
5. Sickle Cell Disease.
6. Management of Acute Post-Operative Pain.
7. Diagnosis and Treatment of Depressed Outpatients in the Primary Care Setting.

In 1991 the following five new topics have been selected for guideline development by panels of experts and health care consumers:

1. Management of Cancer-Related Pain.
2. Treatment of Stage II and Greater Pressure Ulcers.
3. AIDS and HIV Infection.
4. Low Back Disorders.
5. Development of Quality Determinants of Mammography.

To ensure the development of guidelines, AHCPR, acting through the Forum, has arranged for panels of experts and consumers in the above listed topics, who will develop the specific guidelines. Panel responsibilities include determination of the scope of the guidelines, assessment of the available scientific evidence and clinical consensus, and conducting peer review and pilot review of drafts of the guidelines.

Thus far, public meetings of panels to solict information and comments from interested parties have been held with respect to benign prostatic hyperplasia, depression, management of post-operative pain, pressure ulcers, urinary incontinence, and cataracts.

Arrangements for September 25 Public Meeting on Visual Impairment Due to Cataracts in The Aging Eye

Representatives of organizations and other individuals are invited to provide relevant written documents and information and make a brief (5 minutes or less) oral statement to the panel. Health Systems Research, Inc. (HSR), the organization which provides logistical and technical support to the panels, is making the administrative arrangements for this public meeting on behalf of the panel. Individuals and representatives who would like to attend should register with HSR at the address set out below by September 19 and indicate whether they plan to make an oral statement. Those wishing to make oral statements and provide written comments and information must also submit copies of these to HSR by September 19. If more requests to make oral statements are received than can be accommodated between 9 a.m. and noon on September 25, the chair person will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professionals and providers, health care consumers, and product and pharmaceutical manufacturers is presented. Those who cannot be allocated their requested speaking time because of time constraints can be assured that their written comments will be considered by the panel in developing the guidelines.

Registration should be made with and written materials submitted to: Health Systems Research, Inc., Attn: Jean Slutsky, 1001 Connecticut Avenue, NW., suite 719, Washington, DC 20036, Phone: 202–828–5100, Fax: 202–728–9469.

Dated: August 28, 1991.

Linda K. Demlo,

Acting Administrator

[FR Doc. 21038 Filed 9–3–91; 8:45am]

BILLING CODE 1505-01-M

Alcohol, Drug Abuse, and Mental Health Administration

National Institute on Alcohol Abuse and Alcoholism; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the advisory committees of the National Institute on Alcohol Abuse and Alcoholism for October 1991.

The initial review groups will be performing review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public and determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Diana Widner, NIAAA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 16C–20, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301–443–4375).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee.
Meeting Dates: October 2–4, 1991.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Open: October 2, 9 a.m.–11 a.m.
Closed: Otherwise.
Contact: Antonio Noronha, Ph.D., rm. 16C–20, Parklawn Bldg., Phone (301) 443–4375.

Committee Name: Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee.
Meeting Dates: October 9–11, 1991.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Open: October 9, 9 a.m.–10 a.m.
Closed: Otherwise.
Contact: Thomas D. Sevy, M.S.W., rm. 16C–26, Parklawn Bldg., Phone (301) 443–6106.

Committee Name: Epidemiology and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee.
Meeting Dates: October 16–18, 1991.
Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.
Open: October 16, 9 a.m.–10 a.m.
Closed: Otherwise.
Contact: Lenore S. Radloff, rm. 16C–26, Parklawn Bldg., Phone (301) 443–6106.

Committee Name: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee.
Meeting Dates: October 21–22, 1991.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Open: October 21, 9 a.m.–10:15 a.m.
Closed: Otherwise.
Contact: Ronald F. Suddendorf, Ph.D., rm. 16C–26, Parklawn Bldg., Phone (301) 443–6106.

Dated: September 4, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–21485 Filed 9–6–91; 8:45 am]

BILLING CODE 4160-20-M

National Institute on Drug Abuse; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the advisory committees of the National Institute on Drug Abuse for October 1991.

The initial review groups will be performing review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

The Extramural Science Advisory Board will include discussions of the recent plan for ADAMHA reorganization, the NIH Strategic Plan; the guidelines for drug abuse research with human subjects, the delineation of areas of expertise between drug abuse research and research carried out by other Institutes, and the topic area of steroid research. This meeting will be open; however, attendance by the public will be limited to space available.

Summaries of the meetings and rosters of the committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 10–42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443–2755).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Biochemistry Research Subcommittee, Drug Abuse Biomedical Research Review Committee.
Meeting Date: October 15–17, 1991.
Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.
Open: October 15, 8:30 a.m. to 9 a.m.
Closed: Otherwise.
Contact: Rita Liu, Ph.D., room 10–42, Parklawn Building, Telephone (301) 443–2620.

Committee Name: Pharmacology I Research Subcommittee, Drug Abuse Biomedical Research Review Committee.
Meeting Date: October 15–18, 1991.
Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.
Open: October 15, 8:30 a.m. to 9 a.m.
Closed: Otherwise.
Contact: Syed Husain, Ph.D., room 10–42, Parklawn Building, Telephone (301) 443–2620.

Committee Name: Pharmacology II Research Subcommittee, Drug Abuse Biomedical Research Review Committee.
Meeting Date: October 15–17, 1991.
Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.
Open: October 15, 8:30 a.m. to 9 a.m.
Closed: Otherwise.
Contact: Gamil Debbas, Ph.D., room 10–42, Parklawn Building, Telephone (301) 443–2620.

Committee Name: Drug Abuse Clinical and Behavioral Research Review Committee.
Meeting Date: October 15–18, 1991.
Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.
Open: October 15, 9 a.m. to 9:30 a.m.
Closed: Otherwise.
Contact: Daniel L. Mintz, room 10–22, Parklawn Building, Telephone (301) 443–9042.

Committee Name: Drug Abuse Epidemiology and Prevention Research Review Committee.
Meeting Date: October 15–18, 1991.
Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.
Open: October 15, 9 a.m. to 9:30 a.m.
Closed: Otherwise.
Contact: Raquel Crider, Ph.D., room 10–22, Parklawn Building, Telephone (301) 443–9042.

Committee Name: Extramural Science Advisory Board, NIDA.
Meeting Date: October 8, 1991.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
Open: October 8, 9 a.m. to 5 p.m.
Contact: Jacqueline P. Downing, room 10A–55, Parklawn Building, Telephone (301) 443–1056.

Dated: September 4, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–21486 Filed 9–6–91; 8:45 am]

BILLING CODE 4160–20–M

Agency for Toxic Substances and Disease Registry

Workshop To Develop a Standardized Neurobehavioral Testing Battery for Use in Environmental Health Field Studies: Meeting

The Agency for Toxic Substances and Disease Registry (ATSDR) and the Emory University School of Public Health announce the following meeting.

Name: Workshop to Develop a Standardized Neurobehavioral Testing Battery for Use in Environmental Health Field Studies.

Times and Dates: 12 noon-6:30 p.m., September 11, 1991; 8:30 a.m.-5:30 p.m., September 12, 1991; 8:30 a.m.-4:45 p.m., September 13, 1991.

Place: Days Hotel Atlanta at Lenox, 3377 Peachtree Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: To obtain input from individual participants which will enable ATSDR to develop a standardized neurobehavioral testing battery for use in environmental health field studies.

Matters to be considered: Participants will discuss possible methods and strategies for use in determining whether neurobehavioral effects are associated with environmental chemical exposures.

Contact Person for More Information: Joyce Smith, Division of Health Studies, ATSDR (MS E31), 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephone (404) 639–0550 or (FTS) 236–0550.

Dated: September 4, 1991.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 91–21586 Filed 9–6–91; 8:45 am]

BILLING CODE 4160–70–M

Food and Drug Administration

[Docket No. 91N–0352]

Chelsea Laboratories, Inc.; Proposal To Withdraw Approval of Abbreviated New Drug Applications; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is proposing to withdraw approval of 12 abbreviated new drug applications (ANDA's) held by Chelsea Laboratories, Inc. (Chelsea), 896 Orlando Ave., West Hempstead, NY 11442. The bases for the proposed withdrawals are (1) that the applications contain untrue statements of material fact; (2) that new evidence of clinical experience not contained in the applications or not available until after the applications were approved, evaluated together with the evidence available when the applications were approved, shows that the drugs are not shown to be safe for use under the conditions of use upon the basis of which the applications were approved; and (3) that based upon new information evaluated together with the evidence available when the applications were approved, there is a lack of substantial evidence that the drugs will have the effect they purport or are represented to have under the conditions of use

prescribed, recommended, or suggested in their labeling.

DATES: Written requests for a hearing by October 9, 1991; data and information in support of the hearing request due by November 8, 1991.

ADDRESSES: A request for hearing, supporting data, and other comments should be identified with Docket No. 91N-0352 and submitted to the Dockets Management Branch (HFA-305), rm. 1-23, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Harry T. Schiller, Center for Drug Evaluation and Research (HFD-366); Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION:

Background

Chelsea holds the following approved ANDA's:

ANDA 70-285 for Tolazamide Tablets 100 milligrams (mg), ANDA 70-286 for Tolazamide Tablets 250 mg, and ANDA 70-287 for Tolazamide Tablets 500 mg, generic versions of Upjohn's Tolinase Tablets (the listed drug under section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(6))).

ANDA 70-568 for Trazodone hydrochloride Tablets 50 mg and ANDA 70-569 for Trazodone hydrochloride Tablets 100 mg, generic versions of Mead Johnson's Desyrel Tablets (the listed drug).

ANDA 70-605 for Ibuprofen Tablets 200 mg, a generic version of Upjohn's Motrin (the listed drug).

ANDA 71-336 for Propoxyphene Napsylate 50 mg and Acetaminophen 325 mg Tablets, and ANDA 71-337 for Propoxyphene Napsylate 100 mg and Acetaminophen 650 mg Tablets, generic versions of Lilly's Darvocet-N Tablets (the listed drug).

ANDA 71-384 for Perphenazine 2 mg and Amitriptyline Hydrochloride 10 mg Tablets, ANDA 71-385 for Perphenazine 2 mg and Amitriptyline Hydrochloride 25 mg Tablets, ANDA 71-386 for Perphenazine 4 mg and Amitriptyline Hydrochloride 10 mg Tablets, ANDA 71-387 for Perphenazine 4 mg and Amitriptyline Hydrochloride 25 mg Tablets, generic versions of Merck Sharp & Dohme's Triavil Tablets (the listed drug).

In support of approval of the ANDA's listed above, Chelsea submitted information to show that its products are bioequivalent to the relevant listed drugs. This information consisted of in vivo bioequivalence studies or in vitro dissolution studies and other information supporting a waiver of in vivo bioequivalence studies.

This information was critical to the approval of Chelsea's products. The listed drugs were approved based on, among other things, safety studies and adequate and well-controlled clinical efficacy studies showing that the products are safe for their intended uses and have the effects claimed for them. Chelsea's generic versions of the listed drugs were approved without the submission of such studies. Instead, Chelsea's products were approved based on findings that the products were bioequivalent to the listed drugs. These findings of bioequivalence are necessary to support the conclusion that Chelsea's products will be therapeutically equivalent to the listed drugs.

In addition to the bioequivalence data, Chelsea submitted to each ANDA dissolution data, batch production records, analytical data (assay, content uniformity), and stability data. These data and information were also necessary for approval. FDA used the dissolution data to assess the comparability of Chelsea's products and the listed drugs, and to establish appropriate dissolution specifications for future, commercial batches of Chelsea's products. The dissolution specifications help provide assurance that Chelsea's commercial batches remain bioequivalent to the listed drugs.

The batch production records are significant because they characterize the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of Chelsea's products shown to be bioequivalent to the listed drugs. In general, these same methods, facilities, and controls must be applied to the production of Chelsea's commercial batches to provide assurance that the products remain bioequivalent to the listed drugs.

The analytical data must demonstrate that Chelsea's products meet required specifications and help provide assurance that the methods used in, and the facilities and controls used for, the manufacture, processing, and packaging of the drugs are adequate to preserve their identity, strength, quality, and purity.

The stability data help provide assurance that Chelsea's products will retain their physical, chemical, and bioequivalence characteristics throughout their labeled shelflife.

For each of the ANDA's listed above, Chelsea manufactured one or more pilot batches of product in order to conduct the tests necessary for approval. Chelsea submitted to FDA copies of the batch production records for the pilot batches. These copies were purported to be copies of the original batch production records retained by the firm.

Between August 23, 1989, and October 5, 1989, FDA conducted an inspection at Chelsea's Inwood, NY manufacturing facility as a part of the agency's ongoing evaluation of the generic drug industry. The findings of that inspection and subsequent investigation provided sufficient justification for the agency to change the therapeutic equivalence evaluation code for nine Chelsea products from therapeutically equivalent to not shown to be therapeutically equivalent. The findings also resulted in the agency issuing a notice in the **Federal Register** of June 22, 1990 (55 FR 25712), proposing to withdraw approval of the nine ANDA's and offering Chelsea an opportunity for a hearing on the proposal.

In consideration of the results of that inspection, Chelsea conducted an internal audit of products for which ANDA's were approved or pending and submitted its findings to FDA. The audit compared the purported original handwritten batch records found at the firm with the rewritten typed records submitted to the ANDA's. The audit identified a number of discrepancies, omissions, and untrue statements including (1) missing documents and calculations comprising, in some ANDA's, the entire blending record; (2) falsification of the identity of the firm that did the color coating and no clear record of how the color coating was done; (3) in one ANDA, the omission of color specification; (4) revised reconciliation steps; (5) in one ANDA, a difference in product shape; (6) different names or initials of individuals purported to have made the batches; (7) different production dates; (8) differences in or omissions from the order of mixing ingredients; (9) different blending times; (10) different drying temperatures, different screen sizes; and (11) the omission of blending start and stop times in the handwritten records and the inclusion of start and stop times in records Chelsea submitted in the ANDA's.

As a result of its audit, Chelsea voluntarily ceased manufacturing and distributing the 12 drug products listed above. Chelsea contends, however, that the handwritten batch records retained in company files are the authentic batch records representing how the bioequivalency batches were actually produced. Chelsea also presented the agency with in vitro data and information that purport to show that the differences between the manufacturing procedures the firm claims to have used to produce the

batches tested for bioequivalency and the manufacturing procedures used by the firm for subsequent production batches are not significant. Chelsea did not, however, compare any of its current production lots with the reference listed drugs.

After careful review of Chelsea's audit results, as well as subsequent letters from the firm, the agency determined that there was sufficient justification to withdraw approval of ANDA's 70–285, 70–286, 70–287, 70–568, 70–569, 70–605, 71–336, 71–337, 71–384, 71–385, 71–386, and 71–387. FDA also determined that there was sufficient justification to change the therapeutic equivalence evaluation code for each product from therapeutically equivalent to not shown to be therapeutically equivalent. Chelsea was informed of the agency's conclusions in letters dated September 12, 1990, and April 26, 1991.

Based upon information furnished by Chelsea, and meetings and correspondences with Chelsea, the Director of the Center for Drug Evaluation and Research has determined that the ANDA's listed below should be withdrawn. These ANDA's contain untrue statements of material fact. Moreover, the drugs covered by these applications have not been shown to be safe and lack substantial evidence of effectiveness. A discussion of the evidence supporting these determinations follows:

ANDA 70–285; Tolazamide Tablets 100 mg. The approval of ANDA 70–285 for Tolazamide Tablets 100 mg relied on a bioequivalence study conducted on Chelsea's Tolazamide Tablets, 500 mg, batch PD 972. FDA waived the requirement for an in vivo bioequivalence study on the 100-mg product because, at that time, the agency thought that an acceptable bioequivalence study had been conducted on the 500-mg product, both products met acceptable dissolution parameters, and both products were proportionally similar in their active and inactive ingredients.

As discussed below, the batch records submitted to FDA concerning batch PD 972 used to conduct the in vivo bioequivalence study for the 500-mg product contained a number of discrepancies. These discrepancies impugn the validity and integrity of the bioequivalence data on the 500-mg product. Thus, the bioequivalence of the 100-mg product is now in question.

In addition, batch PD 809 was used to conduct the required dissolution, analytical, and stability tests for the 100-mg product. Chelsea's audit disclosed various discrepancies between the records for batch PD 809 at the firm and the records for the batch submitted to FDA with the ANDA. The handwritten batch record on file at the firm, which Chelsea purports to be the authentic batch record, differs from the typed batch record submitted to the ANDA in the order of addition of ingredients, blending time, screen size, drying time and temperature, omission of the lot number of water used, signatures of personnel manufacturing the batch, omission of start and stop times, and blend reconciliation information.

ANDA 70–286; Tolazamide Tablets 250 mg. The approval of ANDA 70–286 for Tolazamide Tablets 250 mg relied on a bioequivalence study conducted on Chelsea's Tolazamide Tablets, 500 mg, batch PD 972. FDA waived the requirement for an in vivo bioequivalence study on the 250-mg product because, at that time, the agency thought that an acceptable bioequivalence study had been conducted on the 500-mg product, both products met acceptable dissolution parameters, and both products were proportionally similar in their active and inactive ingredients.

As discussed below, the batch records submitted to FDA concerning batch PD 972 used to conduct the in vivo bioequivalence study for the 500-mg product contained a number of discrepancies. These discrepancies impugn the validity and integrity of the bioequivalence data on the 500-mg product. Thus, the bioequivalence of the 250-mg product is now in question.

In addition, batch PD 971 was used to conduct the required dissolution, analytical, and stability tests for the 250-mg product. Chelsea's audit disclosed various discrepancies between the records for batch PD 971 at the firm and the records for the batch submitted to FDA with the ANDA. The handwritten batch record on file at the firm, which Chelsea purports to be the authentic batch record, differs from the typed batch record submitted to the ANDA in the order of addition of ingredients, blending time, screen size, omission of the lot number of water used, signatures of personnel manufacturing the batch, dates of granulation, omission of start and stop times, and the omission of specific reconciliation information.

ANDA 70–287; Tolazamide Tablets 500 mg. In support of the approval of ANDA 70–287; Chelsea submitted to FDA batch production records for batch PD 972. Product from this batch was used to conduct the required in vivo bioequivalence study, dissolution tests, analytical tests, and stability tests. Chelsea's audit disclosed various discrepancies between the records for batch PD 972 at the firm and the records for the batch submitted to FDA with the ANDA. The handwritten batch record on file at the firm, which Chelsea purports to be the authentic batch record, differs from the typed batch record submitted to the ANDA in the order of addition of ingredients, blending time, screen size, omission of the lot number of water used, signatures of personnel manufacturing the batch, dates of manufacturing, omission of start and stop times, and the omission of specific reconciliation information.

ANDA 70–568; Trazodone Hydrochloride Tablets 50 mg. The approval of ANDA 70–568 for Trazodone Hydrochloride Tablets 50 mg relied on a bioequivalence study conducted on Chelsea's Tolazamide Tablets, 100 mg, batch PD 990. FDA waived the requirement for an in vivo bioequivalence study on the 50-mg product because, at that time, the agency thought that an acceptable bioequivalence study had been conducted on the 100-mg product, both products met acceptable dissolution parameters, and both products were proportionally similar in their active and inactive ingredients.

As discussed below, the batch records submitted to FDA concerning batch PD 990 used to conduct the in vivo bioequivalence study for the 100-mg product contained a number of discrepancies. These discrepancies impugn the validity and integrity of the bioequivalence data on the 100-mg product. Thus, the bioequivalence of the 50-mg product is now in question.

In addition, batch PD998 was used to conduct the required dissolution, analytical, and stability tests for the 50-mg product. Chelsea's audit disclosed various discrepancies between the records for batch PD 988 at teh firm and the records for the batch submitted to FDA with the ANDA. The handwritten batch record on file at the firm, which Chelsea purports to be the authentic batch record, differs from the typed batch record submitted to teh ANDA in the number of preblends done, order of addition of ingredients, blending time, whether screens were used for some ingredients, initials of personnel manufacturing the batch, omission of start and stop times, and blend reconciliation information.

ANDA 70–569; Trazodone Hydrochloride Tablets 100 mg. In support of approval of ANDA 70–569, Chelsea submitted to FDA batch production records for batch PD 990. Product from this batch was used to conduct the required in vivo bioequivalence study, dissolution tets, analytical tests, and stability tests.

Chelsea's audit disclosed various discrepancies between the records for batch PD 990 at the firm and the records for the batch submitted to FDA with the ANDA. The ahndwritten batch record on file at teh firm, which Chelsea purports to be the authentic batch record, differs from the typed batch record submitted to the ANDA in the order of addition of ingredients, blending time, whether screens were used for some ingredients, signatures of personnel manufacturing the batch, and whether a preblend was done. In addition, the handwritten batch record at the firm omits an ingredient found in the batch record submitted to teh ANDA, although Chelsea claims that analytical testing confirms that the ingredient is present in its product.

ANDA 70-605; Ibuprofen Tablets 200 mg. In support of approval of ANDA 70-605, Chelsea submitted to FDA batch production records for batch PD 976. Product from this batch was used to conduct the required in vivo bioequivalence study, dissolution tests, analytical tests, and stability tests. Chelsea's audit disclosed various discrepancies between the records for batch PD 976 at teh firm and teh recors for the batch submitted to FDA with the ANDA. The handwritten batch record on fiel at teh firm, which Chelsea purports to be the authentic batch record, differs from the typed batch record submitted to the ANDA in specification of screen size, omission of the lot number of the wter used, drying temperature, signatures of personnel manufacturin the batch, a start and stop time, and recalculated reconciliation steps.

Moreover, Chelsea submitted documents to ANDA 70-605 indicating that the color coating of batch PD 976 was done by Chelsea. The handwritten batch records, however, contain documentation that the color coating was done by another firm nto registered or approved as a drug manufacturer. Chelsea has admited that batch PD 976 was color coated by the other firm.

In it audit, Chelsea claims that its subsequent production batches were made using the same equipment and coating parameters used by the other firm. Because of omissions and the lack of comparability between the two sets of color coating records, FDA cannot determine the manufacturing role played by Chelsea personnel, the personnel of the other firm, or even bhow the actual

ANDA 71-336; Propoxyphene Napsylate 50 mg and Acetaminophen 325 mg Tablets. The approval of ANDA 71-336 for Propoxyphene Napsylate 50 mg and Acetaminophen 325 mg Tablets (50 mg/325 mg product) relied on a bioequivalence study conducted on Chelsea's Propoxyphene Napsylate 100 mg and Acetaminophen 650 mg Tablets (100 mg/650 mg product), batch PD 1097. FDA waived the requirement for an in vivo bioequivalence study on the 50 mg/325 mg product because, at that time, the agency thought that an acceptable bioequivalence study had been conducted on the 100 mg/650 mg product, both products met acceptable dissolution parameters, and both products were proportionally similar in their active and inactive ingredients.

As discussed below, the batch records submitted to FDA concerning batch PD 1097 used to conduct the in vivo bioequivalence study for the 100 mg/650 mg product contained a number of discrepancies. These discrepancies impugn the validity and integrity of the bioequivalence data on the 100 mg/650 mg product. Thus, the bioequivalence of the 50 mg/325 mg product is now in question.

In addition, batch PD 1094 was used to conduct the required dissolution, analytical, and stability tests for the 50 mg/325 mg product. Chelsea's audit disclosed various discrepancies between the records for batch PD 1094 at the firm and the records for the batch submitted to FDA with the ANDA. The handwritten batch record on file at the firm, which Chelsea purports to be the authentic batch record, differs from the typed batch record submitted to the ANDA in the number of ingredients weighed and checked and tablet shape.

Although not noted in Chelsea's audit, Chelsea's handwritten batch record is internally inconsistent in recording the initials of the individuals who weighed and checked the raw materials and the omission, on the weigh-up record, of the lot numbers of two of the raw materials weighed. The audit also neglects to report that, in records both submitted to the ANDA and retained by the firm, the tablets are said to have been compressed on August 1, 1985, and then, after compression, transferred into drums on July 16, 1985.

Moreover, Chelsea submitted documents to ANDA 71-336 indicating that the color coating of batch PD 1094 was done by Chelsea. The handwritten batch records, however, contain documentation that the color coating was done by another firm not registered or approved as a drug manufacturer. Chelsea has admitted that batch PD 1094 was color coated by the other firm. In its audit, Chelsea claims that its subsequent production batches were made using the same equipment and coating parameters used by the other firm. Because of broad discrepancies and omissions and the lack of comparability between the two sets of color coating records, FDA cannot determine the manufacturing role played by Chelsea personnel, the personnel of the other firm, or even how the actual color coating was done. Assuming that Chelsea did follow the other firm's color coating practices for its commercial batches, FDA cannot be reassured by the fact that Chelsea followed manufacturing practices and procedures that were never approved.

ANDA 71-337; Propoxyphene Napsylate 100 mg and Acetaminophen 650 mg Tablets. In support of approval of ANDA 71-337, Chelsea submitted to FDA batch production records for batch PD 1097. Product from this batch was used to conduct the required in vivo bioequivalence study, dissolution tests, analytical tests, and stability tests. Chelsea's audit disclosed various discrepancies between the records for batch PD 1097 at the firm and the records for the batch submitted to FDA with the ANDA. The handwritten batch record on file at the firm, which Chelsea purports to be the authentic batch record, differs from the typed batch record submitted to the ANDA in the omission of information on color designation and the order of addition of ingredients. Furthermore, two ingredients listed in the batch records submitted to the ANDA were not listed in the handwritten batch record found at the firm. Chelsea claims, however, that they were included in the batch as documented by the raw material weight sheet and the weight of the blend. Chelsea attributes the omissions to an erroneous standard operating instruction sheet that was used in making this batch and the test batch for ANDA 71-336.

Moreover, Chelsea submitted documents to ANDA 71-337 indicating that the color coating of batch PD 1097 was done by Chelsea. The handwritten batch records, however, contain documentation that the color coating was done by another firm not registered or approved as a drug manufacturer. Chelsea has admitted that batch PD 1097 was color coated by the other firm. In its audit, Chelsea claims that its subsequent production batches were made using the same equipment and coating parameters used by the other firm. Because of omissions and the lack of comparability between the two sets of color coating records, FDA cannot determine the manufacturing role played by Chelsea personnel, the personnel of the other firm, or even how the actual color coating was done. Assuming that Chelsea did follow the other firm's color coating practices for its commercial

production batches, FDA cannot be reassured by the fact that Chelsea followed manufacturing practices and procedures that were never approved.

ANDA 71-384; Perphenazine 2 mg and Amitriptyline Hydrochloride 10 mg Tablets. The approval of ANDA 71-384 for Perphenazine 2 mg and Amitriptyline Hydrochloride 10 mg Tablets (2 mg/10 mg product) relied on a bioequivalence study conducted on Chelsea's Perphenazine 4 mg and Amitriptyline Hydrochloride 25 mg Tablets (4 mg/25 mg product), batch PD 995. FDA waived the requirement for an in vivo bioequivalence study on the 2 mg/10 mg product because, at that time, the agency thought that an acceptable bioequivalence study had been conducted on the 4 mg/25 mg product, both products met acceptable dissolution parameters, and both products were proportionally similar in their active and inactive ingredients.

As discussed below, the batch records submitted to FDA concerning batch PD 995 used to conduct the in vivo bioequivalence study for the 4 mg/25 mg product contained a number of discrepancies. These discrepancies impugn the validity and integrity of the bioequivalence data on the 4 mg/25 mg product. Thus, the bioequivalence of the 2 mg/10 mg product is now in question.

In addition, batch PD 1033 was used to conduct the required dissolution, analytical, and stability tests for the 2 mg/10 mg product. Chelsea's audit disclosed various discrepancies between the records for batch PD 1033 at the firm and the records for the batch submitted to FDA with the ANDA. The handwritten batch record on file at the firm, which Chelsea purports to be the authentic batch record, differs from the typed batch record submitted to the ANDA in the signatures of personnel manufacturing the batch, dates of manufacturing, and revised reconciliation steps. Chelsea reported that it could not locate batch records in its files for the order of addition of ingredients, mixing times, equipment used, and screen sizes, so that no comparison can be made for these critical manufacturing steps.

Moreover, Chelsea submitted documents to ANDA 71-384 indicating that the color coating of batch PD 1033 was done by Chelsea. The handwritten batch records, however, contain documentation that the color coating was done by another firm not registered or approved as a drug manufacturer. Chelsea has admitted that batch PD 1033 was color coated by the other firm. In its audit, Chelsea claims that its subsequent production batches were made using the same equipment and coating parameters used by the other firm. Because of omissions and the lack of comparability between the two sets of color coating records, FDA cannot determine the manufacturing role played by Chelsea personnel, the personnel of the other firm, or even how the actual color coating was done. Assuming that Chelsea did follow the other firm's color coating practices for its commercial batches, FDA cannot be reassured by the fact that Chelsea followed manufacturing practices and procedures that were never approved.

ANDA 71-385; Perphenazine 2 mg and Amitriptyline Hydrochloride 25 mg Tablets. The approval of ANDA 71-385 for Perphenazine 2 mg and Amitriptyline Hydrochloride 25 mg Tablets (2 mg/25 mg product) relied on a bioequivalence study conducted on Chelsea's Perphanazine 4 mg and Amitriptyline Hydrochloride 25 mg Tablets (4 mg/25 mg product), batch PD 995. FDA waived the requirement for an in vivo bioequivalence study on the 2 mg/25 mg product because, at that time, the agency thought that an acceptable bioequivalence study had been conducted on the 4 mg/25 mg product, both products met acceptable dissolution parameters, and both products were proportionally similar in their active and inactive ingredients.

As discussed below, the batch records submitted to FDA concerning batch PD 995 used to conduct the in vivo bioequivalence study for the 4 mg/25 mg product contained a number of discrepancies. These discrepancies impugn the validity and integrity of the bioequivalence data on the 4 mg/25 mg product. Thus, the bioequivalence of the 2 mg/25 mg product is now in question.

In addition, batch PD 1024 was used to conduct the required dissolution, analytical, and stability tests for the 2 mg/10 mg product. Chelsea's audit disclosed various discrepancies between the records for batch PD 1024 at the firm and the records for the batch submitted to FDA with the ANDA. The handwritten batch record on file at the firm, which Chelsea purports to be the authentic batch record, differs from the typed batch record submitted to the ANDA in the signatures of personnel manufacturing the batch, dates of manufacturing, and revised reconciliation steps. Chelsea reported that it could not locate batch records in its files for the order of addition of ingredients, mixing times, equipment used, and screen sizes, so that no comparison can be made for these critical manufacturing steps.

Moreover, Chelsea submitted documents to ANDA 71-385 indicating that the color coating of batch PD 1024 was done by Chelsea. The handwritten batch records, however, contain documentation that the color coating was done by another firm not registered or approved as a drug manufacturer. Chelsea has admitted that batch PD 1024 was color coated by the other firm. In its audit, Chelsea claims that its subsequent production batches were made using the same equipment and coating parameters used by the other firm. Because of omissions and the lack of comparability between the two sets of color coating records, FDA cannot determine the manufacturing role played by Chelsea personnel, the personnel of the other firm, or even how the actual color coating was done. Assuming that Chelsea did follow the other firm's color coating practices for its commercial batches, FDA cannot be reassured by the fact that Chelsea followed manufacturing practices and procedures that were never approved.

ANDA 71-386; Perphenazine 4 mg and Amitriptyline Hydrochloride 10 mg Tablets. The approval of ANDA 71-386 for Perphenazine 4 mg and Amitriptyline Hydrochloride 10 mg Tablets (4 mg/10 mg product) relied on a bioequivalence study conducted on Chelsea's Perphenazine 4 mg and Amitriptyline Hydrochloride 25 mg Tablets (4 mg/25 mg product), batch PD 995. FDA waived the requirement for an in vivo bioequivalence study on the 4 mg/10 mg product because, at that time, the agency thought that an acceptable bioequivalence study had been conducted on the 4 mg/25 mg product, both products met acceptable dissolution parameters, and both products were proportionally similar in their active and inactive ingredients.

As discussed below, the batch records submitted to FDA concerning batch PD 995 used to conduct the in vivo bioequivalence study for the 4 mg/25 mg product contained a number of discrepancies. These discrepancies impugn the validity and integrity of the bioequivalence data on the 4 mg/25 mg product. Thus, the bioequivalence of the 4 mg/10 mg product is now in question.

In addition, batch PD 1034 was used to conduct the required dissolution, analytical, and stability tests for the 4 mg/10 mg product. Chelsea's audit disclosed various discrepancies between the records for batch PD 1034 at the firm and the records for the batch submitted to FDA with the ANDA. The handwritten batch record on file at the firm, which Chelsea purports to be the authentic batch record, differs from the typed batch record submitted to the ANDA in the dates of manufacturing and revised reconciliation steps.

Chelsea reported that it could not locate batch records in its files for the order of addition of ingredients, mixing times, equipment used, and screen sizes, so that no comparison can be made for these critical manufacturing steps.

Moreover, Chelsea submitted documents to ANDA 71-386 indicating that the color coating of batch PD 1034 was done by Chelsea. The handwritten batch records, however, contain documentation that the color coating was done by another firm not registered or approved as a drug manufacturer. Chelsea has admitted that batch PD 1034 was color coated by the other firm. In its audit, Chelsea claims that its subsequent production batches were made using the same equipment and coating parameters used by the other firm. Because of omissions and the lack of comparability between the two sets of color coating records, FDA cannot determine the manufacturing role played by Chelsea personnel, the personnel of the other firm, or even how the actual color coating was done. Assuming that Chelsea did follow the other firm's color coating practices for its commercial batches, FDA cannot be reassured by the fact that Chelsea followed manufacturing practices and procedures that were never approved.

ANDA 71-387; Perphenazine 4 mg and Amitriptyline Hydrochloride 25 mg Tablets. In support of approval of ANDA 71-387, Chelsea submitted to FDA batch production records for batch PD 995. Product from this batch was used to conduct the required in vivo bioequivalence study, dissolution tests, analytical tests, and stability tests. Chelsea's audit disclosed various discrepancies between the records for batch PD 995 at the firm and the records for the batch submitted to FDA with the ANDA. The handwritten batch record on file at the firm, which Chelsea purports to be the authentic batch record, differs from the typed batch record submitted to the ANDA in the blending of ingredients, blending times, signatures of personnel manufacturing the batch, start and stop times, and revised reconciliation steps.

Moreover, Chelsea submitted documents to ANDA 71-387 indicating that the color coating of batch PD 995 was done by Chelsea. The handwritten batch records, however, contain documentation that the color coating was done by another firm not registered or approved as a drug manufacturer. Chelsea has admitted that batch PD 995 was color coated by the other firm. In its audit, Chelsea claims that its subsequent production batches were made using the same equipment and coating parameters used by the other firm. Because of omissions and the lack of comparability between the two sets of color coating records, FDA cannot determine the manufacturing role played by Chelsea personnel, the personnel of the other firm, or even how the actual color coating was done. Assuming that Chelsea did follow the other firm's color coating practices for its commercial batches, FDA cannot be reassured by the fact that Chelsea followed manufacturing practices and procedures that were never approved.

Conclusion

The discrepancies discussed above show that the batch records submitted in support of ANDA's 70-285, 70-286, 70-287, 70-568, 70-569, 70-605, 71-336, 71-337, 71-384, 71-385, 71-386, and 71-387 contain untrue statements of material fact. These statements are material in that they concern matters that could have influenced approval of the applications.

The agency based its approval of each ANDA on the revised batch record containing untrue statements. FDA was never afforded the opportunity to evaluate how the products covered by these ANDA's were actually manufactured.

The order of mixing ingredients, the blending times of ingredients, the screening of the proper ingredients, and the color coating of the product are all significant steps in the manufacturing of a finished dosage product that may affect the product's physical, chemical, and bioequivalence characteristics. Untrue statements submitted to an ANDA concerning any one (or more) of these significant manufacturing steps could alter the agency's evaluations of the required test data, especially the bioequivalency data. Because Chelsea submitted untrue statements concerning fundamental manufacturing steps to each ANDA, the agency cannot be assured of the identity, strength, quality, purity, and bioequivalency of each product.

Furthermore, the factual discussion above shows that Chelsea deliberately submitted untrue statements to each ANDA or submitted statements with a reckless disregard for their truthfulness. The firm completely disregarded acceptable standards for recordkeeping and repeatedly allowed untrue statements to be incorporated into the records submitted to FDA (e.g., freely substituting names, dates, calculations, and the identity of the firm manufacturing the color coating). Moreover, the batch records that Chelsea claims are the authentic batch records are in themselves flawed by significant omissions including, in some cases, the disappearance of the data covering the entire production sequence prior to tablet compression. Thus, the agency can no longer be assured as to the accuracy and validity of any of the data used to support approval of the ANDA's.

Moreover, the discovery of these untrue statements constitutes new information (1) showing that the drugs are not shown to be safe for use under the conditions of use upon the basis of which the applications were approved; and (2) demonstrating that there is a lack of substantial evidence that the drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling. Without reliable information as to the manufacturing processes used for the test batches on which bioequivalence studies were performed, the agency cannot assume that the results of these studies are applicable to the approved, marketed products. In the absence of reliable data demonstrating bioequivalence to the listed drugs, there is a lack of evidence of safety and a lack of substantial evidence of effectiveness. Chelsea's submission of in vitro analytical data does not remove questions about the reliability of the bioequivalence data submitted to the ANDA's and, in the absence of an acceptable bioequivalence study, cannot demonstrate that Chelsea's marketed products are bioequivalent to the listed drugs.

Proposed Action and Notice of Opportunity for Hearing

The Director of the Center for Drug Evaluation and Research has evaluated the information discussed above concerning the filing of untrue statements of material fact by Chelsea and, on the grounds stated, is proposing to withdraw approval of the following ANDA's:

ANDA 70-285, Tolazamide Tablets, 100 mg;

ANDA 70-286, Tolazamide Tablets, 250 mg;

ANDA 70-287, Tolazamide Tablets, 500 mg;

ANDA 70-568, Trazodone Hydrochloride Tablets, 50 mg;

ANDA 70-569, Trazodone Hydrochloride Tablets, 100 mg;

ANDA 70-605, Ibuprofen Tablets, 200 mg;

ANDA 71-336, Propoxyphene Napsylate and Acetaminophen Tablets 50 mg/325 mg;

ANDA 71-337, Propoxyphene Napsylate and Acetaminophen Tablets, 100 mg/650 mg;

ANDA 71-384, Perphenazine and Amitriptyline Hydrochloride Tablets, 2 mg/10 mg;

ANDA 71-385, Perphenazine and Amitriptyline Hydrochloride Tablets, 2 mg/25 mg;

ANDA 71-386, Perphenazine and Amitriptyline Hydrochloride Tablets, 4 mg/10 mg; and

ANDA 71-387, Perphenazine and Amitriptyline Hydrochloride Tablets, 4 mg/25 mg.

Notice is hereby given to the holder of the ANDA's listed above and to all other interested persons, that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the act (21 U.S.C. 355(e)), withdrawing approval of the foregoing ANDA's, and all amendments and supplements thereto. The Director finds: (1) that the applications contain untrue statements of material fact; (2) that new evidence of clinical experience, not contained in the applications or not available to him until after the applications were approved, evaluated together with the evidence available to him when the applications were approved, shows that the drugs are not shown to be safe for use under the conditions of use upon the basis of which the applications were approved; and (3) on the basis of new information before him with respect to the drugs, evaluated together with the evidence available to him when the applications were approved, that there is a lack of substantial evidence that the drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

In accordance with section 505 of the act and 21 CFR part 314, the applicant is hereby given an opportunity for a hearing to show why approval of the ANDA's should not be withdrawn.

An applicant who decides to seek a hearing shall file: (1) on or before October 9, 1991, a written notice of appearance and request for hearing, and (2) on or before November 8, 1991, the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, a notice of appearance and request for a hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in 21 CFR 314.200 (except that the limitations imposed by 21 CFR 314.200 (d)(1) and (d)(2) do not apply) and in 21 CFR part 12.

The failure of the applicant to file a timely written notice of appearance and request for hearing, as required by 21 CFR 314.200, constitutes an election by that person not to use the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of that person's drug products. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon more allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the applications, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice of opportunity for hearing are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Section 505(j)(6)(C) of the act requires that FDA remove from its approved product list (FDA's publication "Approved Drug Products with Therapeutic Equivalence Evaluations") (the list) any drug that was withdrawn for grounds described in the first sentence of section 505(e) of the act. If the agency determines that withdrawal of the drugs subject to this notice is appropriate, FDA will announce their removal from the list in the **Federal Register** notice announcing the withdrawal of approval of the drugs.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505 (21 U.S.C. 355)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: August 23, 1991.

Gerald F. Meyer,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 91-21483 Filed 9-6-91; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of Two Indiana State Plan Amendments (SPAs)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on October 10, 1991, in the 15th Floor Conference Room, 105 W. Adams Street, Chicago, Illinois to reconsider our decision to disapprove Indiana SPAs 90-16 and 91-2.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by September 24, 1991.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, Telephone: (301) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Indiana State Plan amendments (SPAs) number 90-16 and 91-2.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Indiana 90–16 contains the following: obstetrical and pediatric payment rates for 1988 and 1989/1990 by procedure, specialty and locality; a comparison of the number of physicians serving the general population in each county to the number of Medicaid participating physicians in each county; a comparison of the ratio of physicians to patients for the general population versus the Medicaid population; provider enrollment figures for 1988 and 1990; and, a breakdown of providers by locality and specialty.

Indiana 91–2 contains the following: Obstetrical and pediatric payment rates for 1988 and 1991 by procedure, specialty and locality; a comparison of the number of physicians serving the general population in each county to the number of Medicaid participating physicians in each county; a comparison of the ratio of physicians to patients for the general population versus the Medicaid population; provider enrollment figures for 1988, 1990 and 1991; and, a breakdown of providers by locality and specialty.

The issue here is whether the plan amendments meet the statutory provisions of section 1926(a) of the Act and thus, also comply with section 1902(a)(30)(A) of the Act.

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, requires that by no later than April 1 of each year (beginning in 1990), States are to submit plan amendments specifying their payment rates for obstetrical practitioner services and pediatric practitioner services. States also must provide specific information to document that those payment rates are sufficient to enlist enough providers such that obstetrical and pediatric services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) of the Act). In addition, States must submit data to document that payments to Health Maintenance Organizations (HMOs) take into account payment rates for fee-for-service obstetrical and pediatric services.

HCFA is developing its final policy concerning what data and information are required to determine that the State is in compliance with section 1902(a)(30)(A) of the Act. HCFA has, however, determined that for obstetrical and pediatric rate SPAs to be approvable, they must include the following:

1. Payment rates for this year and next year (i.e., 1990 and 1991 for SPA 90–16, and 1991 and 1992 for SPA 91–2) for those obstetrical and pediatric services covered under the State's plan. Pediatric rates must be specified by procedure; we recommend the same format for obstetrical services;

2. Data that document that payment rates for obstetrical and pediatric services are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; and

3. Data that document that payment rates to HMOs under section 1903(m) of the Act take into account the payment rates given in number 1 above.

HCFA has also developed several guidelines, that if met by the State, would evidence that the State meets the statutory requirements of section 1926 of the Act. These guidelines are set forth in a draft State Medicaid manual (SMM) revision dated March 26, 1990.

The State argues that its submittals meet the statutory requirements of sections 1902(a)(30)(A) and 1926 of the Act under a combination of guidelines number 1 (Practitioner Participation) and number 3 (Other) from the March 26 draft SMM issuance. Guideline 1 of the draft SMM revision permits the State to document its compliance with the statute by submitting data showing that at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants or that Medicaid participation is at the same rate as Blue Shield participation. Guideline 3 of the draft SMM issuance permits the State to document its compliance with the statute by "other appropriate means." Although the State presents a number of arguments which have substantial merit, HCFA has determined that Indiana is unable to provide sufficient data necessary to meet the statutory requirements.

The State has attempted to prove equal access for Medicaid individuals by showing that the ratio of Medicaid participating practitioners to the Medicaid population is no less than that of non-participating practitioners to the general population. However, the State's ratio has not shown that access by Medicaid participating practitioners to Medicaid recipients is equal to or greater than access by non-participating practitioners to the non-Medicaid population.

HCFA believes the State's documentation would be acceptable if the data showed at least 50 percent of its obstetrical/pediatrical practioners in the State provided services to Medicaid recipients (and no ratio would be needed). Absent this, the State's ratio attempts to show that access to a practitioner is equivalent for Medicaid and non-Medicaid individuals. However, this ratio essentially is showing access to a practitioners time. It assumes that paticipating practitioners only treat Medicaid patients and non-participating practitioners only treat non-Medicaid patients. While this assumption is valid for non-participating practitioners (as that is how they are defined), it is not necessarily true for participating providers. The ratio is only valid if the State specifies the percentage of time that the participating practitioner provided services to Medicaid and non-Medicaid recipients.

HCFA also noted that the data utilized by the State may not be consistent if it is not for comparable time periods. General population figures were based on the most recent available data from the Business Research Center of the Indiana University Study. For SPA 90–16, these figures were compared to Medicaid population figures taken from 1990 enrollment data. For SPA 91–2, these figures were compared to Medicaid population figures from 1991 enrollment data. If the general population figures are not for 1990 and 1991, any comparison is invalid. The State should be aware that enrollment and participation do not equate. The number of enrolled individuals does not equal the number actually receiving services. HCFA, therefore, cannot be certain of the State's figures showing the participation of obstetrical and pediatric practitioners.

The State's submittal reflected the number of physicians per county with a speciality in family practice, general practice, pediatrics or obstetrics/gynecology who have filed at least one claim in the last 12 months. Since HCFA has not formally defined what constitutes a "participating practitioner", the State has used the liberal definition cited above. Even so, the State's attempt to show adequacy of access by practitioner participation was still insufficient. For example, in both SPAs (90–16 and 91–2) the State attempted to provide data on the total number of practitioners by county. However, the State, without explanation, provided one number for two counties together. It is unclear why certain counties were grouped and where the practitioners are located or participated. In addition, for the counties with less than 50 percent provider participation, Indiana cited surrounding counties exceeding 50

percent. However, the State failed to demonstrate that recipients in such counties have the same access patterns as the general population in those counties.

The State indicated that in areas where individual physicians are not immediately available, recipients have full access to clinic services for obstetrical and pediatric services. Clinics do not fall within the definition of obstetrical or pediatric services as defined in section 1926(a)(4) of the Act. Those definitions include only individual providers in the singular while specifically excluding inpatient or outpatient hospital services or other institutional services. HCFA believes the intent of Congress was to exclude services delivered on an outpatient basis by clinics. In fact the payment mechanism, at 42 CFR 447.321, is the same for clinic services and outpatient hospital services. Therefore, any data submitted to document the State's compliance with the practitioner participation standard, set forth in the March 26, 1990 draft SMM, must exclude clinics.

Finally, while the State has provided payment rates for all CPT codes listed in the draft SMM, there are places where the State used "ICIC." In order for HCFA to determine whether the requirements of section 1926 are met, they would need actual number amounts for all codes where this entry appears.

The State did, however, submit data explaining how payment rates for obstetrical and pediatric services are incorporated into the capitation rates for Medicaid contracting HMOs. Therefore, that specific requirement of the statute has been met and that portion of each plan amendment was approved. However, because the fee-for-service payment rates for obstetrical and pediatric services in Indiana SPAs 90–16 and 91–2 do not meet the requirements of section 1902(a)(30)(A), the remainder of the amendments were disapproved. Indiana SPA 90–16 was disapproved on June 5, 1991, and Indiana SPA 91–2 was disapproved on June 26, 1991.

The notice to Indiana announcing an administrative hearing to reconsider the disapproval of its SPAs reads as follows:

Ms. Marilyn Scales, Acting Commissioner, *Department of Public Welfare, 100 North Senate Avenue, Room 701, Indianapolis, Indiana 46204.*

Dear Ms. Scales: I am responding to your request for reconsideration of the decision to disapprove Indiana State Plan Amendments (SPAs) 90–16 and 91–2. Indiana submitted SPAs 90–16 and 91–2 to establish the State's compliance with section 1926 of the Social Security Act (the Act).

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, requires that by no later than April 1 of each year (beginning in 1990), States are to submit plan amendments specifying their payment rates for obstetrical practitioner services and pediatric practitioner services. States also must provide specific information to document that those payment rates are sufficient to enlist enough providers such that obstetrical and pediatric services are available Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A0 of the Act). In addition, States must submit data to document that payment to Health Maintenance Organizations take into account payment rates for fee-for-service obstetrical and pediatric services.

The issue in this matter is whether the plan amendments meet the statutory provisions of section 1926(a) of the Act and thus, also comply with section 1902(a)(30)(A) of the Act.

I am scheduling a hearing on your request for reconsideration to be held on October 10, 1991, at 10 a.m. in the 15th Floor Conference Room, 105 W. Adams Street, Chicago, Illinois. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk may be reached at (301) 597–3013.

Sincerely,

Gail R. Wilensky,

Administrator.

(Section 1116 of the Social Security Act) (42 U.S.C. section 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program).

Dated: August 30, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91–21508 Filed 9–6–91; 8:45 am]

BILLING CODE 4120-03-M

Notice of Hearing: Reconsideration of Disapproval of Tennessee State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on October 16, 1991, in room 701, 101 Marietta Tower, Atlanta, Georgia to reconsider our decision to disapprove Tennessee SPA 91–14.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by September 24, 1991.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, telephone: (301) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Tennessee State Plan amendment (SPA) number 91–14.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Tennessee submitted SPA 91–14 on March 29, 1991 requesting approval of its plan amendment, specifying its payment rates for obstetrical practitioner services and pediatric practitioner services. The data supplied by the State, however, is insufficient to establish the State's compliance with the requirements of section 1926 of the Act.

HCFA has determined that for obstetrical and pediatric rate SPAs to be approvable, they must include the following:

1. Payment rates for this year and next year (i.e. 1991 and 1992) for those obstetrical and pediatric services covered under the State's plan. Pediatric rates must be specified by procedure, and we recommend the same format be followed for obstetrical services;

2. Data that document that payment rates for obstetrical and pediatric services are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; and

3. Data that document that payment rates to health maintenance organizations (HMOs) under section 1903(m) of the Act taken into account the payment rates specified in number 1 above.

HCFA has also developed several guidelines that if met by the State would evidence that the State meets the statutory requirements of section 1926 of the Act. These guidelines are set forth in a draft State Medicaid manual (SMM) revision dated March 26, 1990.

Tennessee argues that its submittal meets the statutory requirements of sections 1902(a)(30)(A) and 1926 of the Act under guideline 1 of the draft SMM revision, which permits the State to document its compliance with the statute by submitting data showing that at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants or that Medicaid participation is at the same rate as Blue Shield participation. Tennessee claimed that it exceeded the 50 percent criteria.

Participating practitioners were defined by the State as those who have filed at least one obstetrical or pediatric claim in the last 12 months. The State's attempt to show adequacy of access by practitioner participation was insufficient. The State provided data on the total number of practitioners by county. However, it did not include the required documentation for practitioner access patterns. For example, the State failed to demonstrate that recipients in its counties have the same access patterns as the general population in those counties. Furthermore, there appears to be an excessive number of counties that fall below the 50 percent provider participation rate. For the counties with less than 50 percent provider participation, Tennessee cited surrounding counties which could provide care. However, some of these surrounding counties also fall below the 50 percent participation criteria.

Also, the State's Submittal did not include any data relating to how rates established for payments to HMOs under section 1903(m) of the Act take into account fee-for-service obstetrical and pediatric payment rates. This data is required by section 1926(a) of the Act.

Finally, Tennessee is proposing to reduce the physician reimbursement for physician services provided to children under 21 in excess of the limitations for physician, hospital visits and liver transplant hospital stays. The physicians will be reimbursed at 60 percent of what otherwise would be reimbursed. Our concern is whether Tennessee would be able to enlist enough providers to provide the services to the children with a reduced reimbursement rate.

Consequently, we had no choice but to disapprove the amendment. Accordingly, after consultation with the Secretary as required by 42 CFR 430.15(c)(2), HCFA disapproved Tennessee SPA 91-14 on June 27, 1991, because it violated existing Federal law.

The notice to Tennessee announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Manny Martins
Assistance Commissioner of Medicaid
Bureau of Medicaid
729 Church Street
Nashville, Tennessee 37219
August 29, 1991.

Dear Mr. Martins: I am responding to your request for reconsideration of the decision to disapprove Tennessee State Plan Amendment (SPA) 91-14. Tennessee submitted SPA 91-14 on March 29, 1991 requesting approval of its plan amendment. It specified the State's payment rates for obstetrical practitioner services and pediatric practitioner services. The data supplied by the State, however, is insufficient to establish the State's compliance with the requirements of section 1926 of the Social Security Act (the Act).

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, requires that by no later than April 1 of each year, States are to submit plan amendments specifying their payment rates for obstetrical practitioner services and pediatric practitioner services. States also must provide specific information to document that those payment rates are sufficient to enlist enough providers such that obstetrical and pediatric services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) of the Act). In addition, States must submit data to document that payments to Health Maintenance Organizations take into account payment rates for fee-for-service obstetrical and pediatric services.

I am scheduling a hearing on your request for reconsideration to be held on October 16, 1991, 10 a.m. in suite 701, 101 Marietta Tower, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk may be reached at (301) 597-3013.

Sincerely,

Gail R. Wilensky,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: August 29, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91-21507 Filed 9-6-91; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-91-3314]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the

office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 28, 1991.

Kay Weaver,

Acting Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Coinsurance Umbrella Reporting System (CURS).

Office: Housing.

Description of the Need for the Information and its Proposed Use: The automated data collection system will enable HUD to evaluate and review on an on-going basis, lenders' servicing and management practices and subsequent project performance.

Form Number: None.

Respondents: Business or Other For-Profit.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	30		12		3.34		1,202

Total Estimated Burden Hours: 1,202.

Status: Reinstatement.

Contact: Tony A. Green, HUD, (202) 708–4280, Wendy Swire, OMB, (202) 395–6880.

Dated: August 1991.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 8 Housing Assistance Payments Program—Special Allocations (Loan Management Set-Aside).

Office: Housing.

Description of the Need for the Information and its Proposed Use: This rule authorizes using Section 8 assistance in existing Multifamily projects with HUD-insured or HUD-held mortgages, including section 202 projects and projects sold by HUD subject to purchase money mortgages.

Form Number: None.

Respondents: Individuals or Households, State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Applications	800		1		20		16,000
Notices	1,400		1		.5		700

Total Estimated Burden Hours: 16,700

Status: Extension.

Contact: James J. Tahash, HUD, (202) 708–3944, Wendy Swire, OMB, (202) 395–6880.

Dated: August 1991.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Section 8 Housing Assistance Payments Program Estimate of Required Annual Contributions, Estimate of Total Required Annual Contributions, Requisition for Partial . . . .

Office: Housing.

Description of the Need for the Information and its Proposed Use: Forms HUD—52663, 52672, 52673, and 52681 are used by Public Housing Agencies to estimate their annual contributions requirements, requisition funds, and to report actual receipt and expenditures to assure that project costs do not exceed the amount authorized in the Annual Contributions Contract.

Form Number: Forms HUD–52663, 52672, 52673, and 52681.

Respondents: State and Local Governments

Frequency of Submission: Annually and Quarterly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD—52672	6,200		1		1.5		9,300
HUD—52673	6,200		1		1.5		9,300
HUD—52663	6,200		4		1.0		24,800
HUD—52681	6,200		1		3.0		18,600

Total Estimated Burden Hours: 62,000.

Status: Extension.

Contact: Mary Conway, HUD (202) 708–2943, Wendy Swire, OMB (202) 395–6880.

Dated: August 28, 1991.

[FR Doc. 91–21545 Filed 9–6–91; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–91–3313]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirements; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 26, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Single Family Mortgage Insurance on Indian Reservation and Other Restricted Lands.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Verification of mortgage security and certification of eviction procedures by Indian tribes are needed by HUD to satisfy requirements for single family mortgage insurance and for use in the event of mortgage foreclosure.

Form Number: None.

Respondents: State or Local Governments and Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Verification of Lien	1,000		1		.5		500
Certification	200		1		.5		100
Appeal of Field Office	20		1		.5		10

Total Estimated Burden Hours: 610.

Status: Extension.

Contact: Richard Harrington, HUD, (202) 708–2676, Wendy Swire, OMB, (202) 395–7285.

Dated: August 26, 1991.

[FR Doc. 91–21546 Filed 9–6–91; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–91–3312]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of

respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 23, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Restriction on Use of Assisted Housing (FR-2383).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This information is needed to comply with Federal statutes and regulations that prohibit HUD from making financial assistance available for the benefit of any alien who is not a lawful resident of the United States. The information is also needed to collect data on citizenship/alien status as part of determining tenant and applicant eligibility.

Form Number: None.

Respondents: Individuals or Households and Businesses or Other For-Profit.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information collection	144,155		1		1.16		167,220
Recordkeeping	2,883,092		1		.05		144,155

Total Estimated Burden Hours: 311,375.

Status: Extension.

Contact: James J. Tahash, HUD (202) 708-3944, Wendy Swire, OMB (202) 395-6880.

Dated: August 23, 1991.

[FR Doc. 91-21547 Filed 9-6-91; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-91-3311]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 27, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Housing Development Grant Program Project Settlement Procedures

Office: Housing.

Description of the Need for the Information and its Proposed Use: The collection of project settlement information is necessary to implement the program regulation at 24 CFR part 850.79. This section of the regulation requires, upon construction completion, that the program respondents account for funds expended. Such accounting is provided through the project settlement process.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of Respondents	×	Frequency of Response	×	Hours per Response	=	Burden Hours
Grant Application	65		1		16		1,040

Total Estimated Burden Hours: 1,040.

Status: Extension.

Contact: Freda Nicolosi, HUD, (202) 708-4961, Wendy Swire, OMB, (202) 395-6880.

Dated: August 27, 1991.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Request for Preliminary Determination of Eligibility as Nonprofit Sponsor and/or Mortgagor.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Form HUD-3433 identifies the nonprofit qualifications to successfully sponsor a multifamily housing project. Forms HUD-3434 and 3435 identify the nonprofits motivation for sponsoring the project and relationships that exists between the officers, directors, and other development team members. Outstanding regulations prohibit nonprofits from being controlled or under the direction of firms seeking to derive a profit or gain.

Form: HUD-3433, HUD-3434, and HUD-3435.

Respondents: Businesses or Other For-Profit, and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of Respondents	×	Frequency of Response	×	Hours per Response	=	Burden Hours
HUD-Form 3433	30		1		.75		22.50
HUD-Form 3434	30		1		.5		15
HUD-Form 3435	210		1		.25		52.50

Total Estimated Burden Hours: 90

Status: Revision.

Contact: Genevieve Tucker, (202) 708-0283, Wendy Swire, OMB, (202) 395-6880.

Dated: August 27, 1991.

[FR Doc. 91-21548 Filed 9-6-91; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-91-3315]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jennifer Main, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the Office of the agency to collect the information; (3) the description of the need for the information and its proposed use: (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 30, 1991.

Kay Weaver,

Acting Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Real Estate Settlement Procedures Act (RESPA) Section 10-24 CFR Part 3500 (Regulation X).

Office: Housing.

Description of the Need for the Information and its Proposed Use: Real Estate Settlement Procedures Act, Escrow Account Statements, and Section 942 of Public Law 101-625 adds a new section 10(c)(1) and section 10(c)(2) of RESPA which requires the servicer of a federally related mortgage to provide the borrower with Initial and Annual Escrow Statement and requires HUD to prescribe a format for such. Section 10(b) requires the servicer to disclose escrow shortages.

Form Number: None.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	20,000		1,635		0.245872		8,040,014

Total Estimated Burden Hours: 8,040,014.

Status: Reinstatement.

Contact: Judith Webb Spelman, HUD, (201) 708-2819, Jennifer Main, OMB, (202) 395-6880.

Dated: August 30, 1991.

[FR Doc. 91-21549 Filed 9-6-91; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-91-3316]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 29, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Waiver Request for the Admission of Over-Income Tenants in Subsidized Projects.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: HUD needs the information collected through waiver request to evaluate, approve, and track the number of tenants who are housed and do not receive the benefit of a tenant-based subsidy.

Form Number: None.

Respondents: Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	350		1		1		350

Total Estimated Burden Hours: 350.

Status: Extension.

Contact: James J. Tahash, HUD, (202) 708–3944, Wendy Swire, OMB, (202) 395–6880.

Dated: August 29, 1991.

[FR Doc. 91–21550 Filed 9–6–91; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–91–3238; FR–2962–N–02]

Neighborhood Development Demonstration Program (NDDP); Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Neighborhood Development Demonstration Program (NDDP). The announcement contains the names and addresses of the award winners and the amounts of the awards.

EFFECTIVE DATE: September 6, 1991.

FOR FURTHER INFORMATION CONTACT: Regina Espenshade, Office of Technical Assistance, Community and Neighborhood Management Division, CGTC, Department of Housing and Urban Development, room 7156, 451 Seventh Street, SW., Washington, DC 20410; telephone number (202) 708–2186. (This is not a toll free number.) The TDD number is (202) 708–0564. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98–181) authorized the Neighborhood Development Demonstration Program. The purpose of this Program is to determine the ability of neighborhood organizations to support eligible neighborhood development activities using cooperative efforts and monetary contributions from individuals, businesses, and nonprofit and other organizations located within established neighborhood boundaries.

The Federal funds are incentive funds to promote the development of this concept, and to encourage neighborhood organizations to become more self-sufficient in their development activities. Thirty percent of the 1991 awards were made to previous grantees in the Program; the remaining 70 percent of the awards were made to those organizations selected from among new applicants.

Applications, which were due on May 24, 1991, were scored and selected for funding on the basis of "Evaluation Criteria" which were contained in the announcement of availability of NDDP funds published on Friday, March 29, 1991 (56 FR 13240). A total of $1.9 million was awarded to 41 neighborhood organizations in 22 States. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), and the Department is publishing the names, addresses, and amounts of those awards as follows:

Recipient	Amount
1. Bethel New Life, Inc., Ms. Mary Nelson, 367 N. Karlov, Chicago, IL 60624	$48,660
2. Bernal Heights Com. Fnd., Ms. Helen Helfer, 515 Cortland Ave., San Francisco, CA 94110	50,000
3. Old 1st Ward Comm. Assn., Mr. Eugene Overdorf, 84 Vandalia St., Buffalo, NY 14204	30,000
4. Salud Para La Gente, Inc., Ms. Barbara Garcia, 10 Carr St., Watsonville, CA 95076	50,000
5. Reach Inc., Ms. Charlene Johnson, 1840 Midland, Detroit, MI 48238	50,000
6. Iron Mountain/Ozan Inghram, Mr. Freddie L. Johnson, 1101 Couch St., Texarkana, AR 75502	50,000
7. Martin House Comm. For Justice, Rev. Brain Mccormick, 802 E. State St., Trenton, NJ 98606	50,000
8. Acorn Housing Corp., Inc., Mr. Martin Shalloo, 808 N. 1st St., Phoenix, AZ 85004	50,000
9. Southernside Block Partnership, Ms. Lila Mae Block, 846 W. Washington St., Greenville, SC 29601	50,000
10. Citizens Neigh. Coalition, Ms. Dorothy Burse, 601 E. 17th St., Indianapolis, IN 46202	50,000
11. Yonkers Apt. Improvement Progam, Mr. Duane L. Nealon, 20 S. Broadway, Room 912, Yonkers, NY 10701-3702	50,000
12. Beacon Light Civic League, Inc., Ms. Edith R. Jones, P.O. Box 4683, Norfolk, VA 23523	50,000
13. Mark Twain Alliance, Mr. L. David Outlaw, 5312 Queens Ave., St. Louis, MO 63115	50,000
14. Mutual Housing Assn. of New York, Mr. Lawson Shadburn, 845 Flatbush Ave., Brooklyn, NY 11226	50,000
15. Walnut Hills Redev. Foundation, Ms. Daphne A. Sloan, 2601 Melrose Ave., Cincinnati, OH 45206	50,000
16. Guadalupe Economics Services, Mr. Richard Lopez, 1416 1st St., Lubbock, TX 79401	50,000
17. E T A Creative Arts Foundation, Mr. Jerome Adams, 7558 S. South Chicago Ave., Chicago, IL 60619	25,000
18. Carroll Gardens Assoc., Inc., Mr. Manuel Ortiz Arroyo, 515 Court St., Brooklyn, NY 11231	50,000
19. Coalition of N.E. Assoc. Comm., Ms. Miriam C. Lynch, 100 William Warfield Drive, Rochester, NY 14605	20,000
20. Dorchester Bay Econ. Dev. Corp., Mr. David Knowles, 594 Columbia Road, #302, Dorchester, MA 02125	45,000
21. First Ward Action Council, Inc., Mr. Jerry Willard, 310 Clinton St., Binghamton, NY 13905	50,000
22. Rockford Neighborhood Redevelopment, Mr. David Stocker, 318 N. Church St., Rockford, IL 61101	50,000
23. Rockaway Dev. & Rev. Corp., Mr. Ed Remsen, 1931 Mott Ave. (Room 316), Far Rockaway, NY 11691	50,000
24. Hubbard Richard Community, Ms. Isabelle Wilson, 2661 Bagley, Detroit, MI 48216	50,000
25. Harlem Restoration Project, Ms. Marie M. Runyon, 461 West 125th St., New York, NY 10027	50,000
26. West Bank CDC, Inc., Mr. George A. Garnett, 2000 South Fifth St., Minneapolis, MN 55454	50,000
27. Cass Corridor N D D P, Ms. Lillian E. Randolph, 3901 Cass Ave., Detroit, MI 48201	50,000
28. Glenville Community Center, Mr. Rick Gillespi Mobley, 10504 Helena Ave., Cleveland, OH 44108	50,000
29. Berkeley Youth Alternatives, Ms. Niculia Williams, 2141 Bonar St., Berkeley, CA 94702	50,000
30. North East Block Club Alliance, Ms. Jerdine Johnson, 1499 Clifford Ave., Rochester, NY 14609	50,000
31. South Community Organization, Ms. Karen M. Schaber, 2201 S. 7th St., Milwaukee, WI 53215	50,000
32. Turtle Mtn. Indian Hist. Soc., Mr. Les Lafountain, Box 257, Belcourt, ND 58316	50,000
33. Nueva Esperanza, Ms. Kathryn Kroll, 401 Main St., Holyoke, MA 01040	40,000
34. Jackson Heights Comm. Day Care, Mr. Albert Blanch, 1100 N. Jordan St., Albany, GA 31705	50,000
35. Cambodian Business Assn., Ms. Vora H. Kanthoul, 2338 E. Anaheim St., Suite 200, Long Beach, CA 90804	50,000
36. Hough Area Partners In Progress, Ms. Maelene J. Myers, 1215 East 79th St., Cleveland, OH 44103	50,000
37. Northeast Denver Housing Center, Mr. Getabecha Mekonnen, 1735 Gaylord St., Denver, CO 80206	50,000
38. Moore Community House, Inc., Ms. Carol Burnett, 406 Davis St., Biloxi, MS 39530	30,000
39. North Ward Center, Inc., Mr. Stephen N. Adubato, 346 Mount Prospect Ave., Newark, NJ 07104	50,000
40. Hill Community Dev. Corp., Mr. Stanley Horn, 2015-2017 Centre Ave., Pittsburgh, PA 15219	50,000
41. Omaha Economic Dev. Corp., Mr. Alvin M. Goodwin, 2221 North 24th St., Omaha NE 68110	50,000

Dated: September 3, 1991.

S. Anna Kondratas,

Assistant Secretary, Community Planning and Development.

[FR Doc. 91-21542 Filed 9-6-91; 8:45 am]

BILLING CODE 4210-29-M

[Docket No. D-91-960]

Office of the Regional Administrator—Regional Housing Commissioner, Atlanta Regional Office; Redelegation of Authority

AGENCY: Office of the Regional Administrator—Regional Housing Commissioner, HUD Atlanta Regional Office.

ACTION: Notice of redelegation of authority.

SUMMARY: This Notice redelegates to the Regional Director of Housing for the Atlanta Regional Office and the Field Office Managers in Region IV the authority of the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner to approve plans of action submitted by owners, pursuant to 24 CFR part 248, which implements the Emergency Low Income Housing Preservation Act, title II of the Housing and Community Development Act of 1987 (the "1987 Act") and the Low Income Housing Preservation and Resident Homeownership Act of 1990, title VI of the National Affordable Housing Act (the "1990 Act").

EFFECTIVE DATE: August 19, 1991.

FOR FURTHER INFORMATION CONTACT: Neil A. Zittrauer, Regional Director of Housing, Atlanta Regional Office, U.S. Department of Housing and Urban Development, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303-3388, telephone (404) 331-4127 [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The 1987 Act and the 1990 Act require owners of eligible low income housing who intend to prepay the mortgage, terminate the mortgage insurance contract, accept incentives in exchange for extending the low income affordability restrictions, or transfer the project to a qualified purchaser, to submit a plan of action providing for such prepayment, termination, extension, or transfer. Section 225 of the 1987 Act and sections 218, 222 and 226 of the 1990 Act provide the Secretary with the authority to approve plans of action subject to the criteria set forth therein. The authority to approve plans of action also includes the incidental authority to issue notice of deficiency letters, preliminary approvals of plans of action, and final approvals of plans of action. The authority to approve plans of action, however, does not include the authority to issue final approval of plans of action prior to receipt of confirmation of assignment of subsidy funds, where such funds are part of the plan of action.

Under a redelegation of authority published in the **Federal Register** at 56 FR 33763 on July 23, 1991, the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner redelegated the authority, as set forth in title II of the 1987 Act and title VI of the 1990 Act, to approve plans of action, submitted by owners of eligible low income housing who intend to prepay the mortgage, terminate the mortgage insurance contract, accept incentives in

exchange for extending the low income affordability restrictions, or transfer the project to a qualified purchaser, to Regional Administrators. The authority to approve plans of action includes the incidental authority to issue notice of deficiency letters, preliminary approvals of plans of action, and final approvals of plans of action. The authority to approve plans of action also includes the incidental authority to issue notice of deficiency letters, preliminary approvals of plans of action, and final approvals of plans of action. The authority to approve plans of action, however, does not include the authority to issue final approval of plans of action prior to receipt of confirmation of assignment of subsidy funds, where such funds are part of the plan of action.

Authorities Redelegated

That redelegation provided that Regional Administrators may, at their option, redelegate this authority to Field Office Managers or, in the case of combined regional and field offices, Regional Administrators may redelegate this authority to Regional Directors of Housing. In accordance with that redelegation, this redelegates the described authority to the Regional Director of Housing and, within their areas of jurisdiction, to Field Office Managers having multifamily housing responsibilities.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 27, 1991.

Raymond A. Harris,

Regional Administrator—Regional Housing Commissioner.

[FR Doc. 91-21541 Filed 9-6-91; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. D-91-959; FR-3073-D-01]

Redelegations of Authority To Declare a Default Under a Regulatory Agreement on Multifamily Housing Projects, Health Care Facilities, Land Development Programs and Group Practice Facilities Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority to declare a default under a regulatory agreement on multifamily housing projects, health care facilities, title X land developments and group practice facilities.

SUMMARY: The Assistant Secretary for Housing—Federal Housing Commissioner is redelegating to the Regional Administrators certain authority to declare a default under a Regulatory Agreement for five specified reasons under several programs and functions authorized by titles II, X, and XI of the National Housing Act (12 U.S.C. 1701 *et seq.*).

EFFECTIVE DATE: August 30, 1991.

FOR FURTHER INFORMATION CONTACT: Herbert Goldblatt, Assistant General Counsel for Affirmative Litigation, Office of Program Enforcement, Department of Housing and Urban Development, 451 Seventh Street SW., room 10270, Washington, DC 20410, (202) 708-0557. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This redelegation of authority redelegates to certain HUD regional officials authority delegated to the Assistant Secretary for Housing—Federal Housing Commissioner by the Secretary of Housing and Urban Development in previous delegations, including the notice of delegation of authority published in the **Federal Register** at 45 FR 60820 on September 12, 1980 and the notice of consolidated delegations of authority published at 54 FR 22033 on May 22, 1989, to declare a default under a Regulatory Agreement for five specified reasons, These include the failure to provide HUD with required financial reports, failure to maintain books and records in a manner suitable for reasonable inspection or audit by the Department, failure to provide monthly financial statements where required, placement of an unauthorized second lien or encumbrance where the mortgage is no longer insured but is held by the Secretary, and unauthorized use of multifamily project income or assets that do not exceed an aggregate damage claim of $200,000 (amount sought after doubling must not exceed $200,000).

The Regulatory Agreement is a contract executed between HUD and a mortgagor. It is used for the purpose of controlling or regulating the daily operations of multifamily housing projects, cooperatives, health care facilities, land developments and group practice facilities which have mortgages insured or held by the Secretary. This contract contains a variety of remedial measures HUD may take upon violation by the mortgagor.

This redelegation is necessary so that HUD may more efficiently carry out its responsibilities for programs and functions authorized by titles II, X, and XI of the National Housing Act (12 U.S.C. 1701 *et seq.*). It is made in contemplation of anticipated litigation by HUD to obtain specific performance and damages for default under the Regulatory Agreement. This redelegation of authority does not affect previously published delegations for Headquarters officials with respect to powers and authorities to administer the Multifamily Housing Programs, Health Care Facilities, the Land Development Program and the Group Practice Facilities Program as described herein. Since this redelegation involves only internal matters of agency management, no comments or public procedure are required.

Accordingly, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates the following authority:

Section A. Authority Redelegated.

HUD Regional Administrators and Deputy Regional Administrators are redelegated authority to declare a default under the Regulatory Agreement for multifamily, cooperative, health care facilities, land developments and group practice facilities under titles II, X, and XI of the National Housing Act (12 U.S.C. 1701 *et seq.*) for the following reasons:

1. Failure to provide HUD with required financial reports;

2. Failure to maintain books and records in a manner suitable for reasonable inspection or audit by the Department;

3. Failure to provide monthly financial statements where required;

4. Placement of an unauthorized second lien or encumbrance where the mortgage is no longer insured but is held by the Secretary; and

5. Unauthorized use of multifamily project income or assets that do not exceed an aggregate damage claim of $200,000 (amount sought after doubling must not exceed $200,000).

Section B. *Exercise of Redelegated Authority.* Redelegation of authority under section A shall not be construed to modify or otherwise affect the outstanding authority delegated to HUD Headquarters officials with respect to powers and authorities to administer the programs identified in section A.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 30, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-21551 Filed 9-6-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-01-4333-02 RPRN]

Gila Box Advisory Committee; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR part 1780, that a meeting of the Gila Box Riparian National Conservation Area (NCA) Advisory Committee will be held.

DATES: Tuesday, October 15, 1991, 1 p.m.

ADDRESSES: BLM Safford District Office, 425 E. 4th Street, Safford, Arizona 85546.

FOR FURTHER INFORMATION: Meg Jensen, Gila Resource Area Manager, 425 E. 4th Street, Safford, Arizona 85546. Telephone 602-428-4040.

SUPPLEMENTAL INFORMATION: The NCA Advisory Committee was established by the Arizona Desert Wilderness Act of 1990 to provide input to the Safford District on management of the Gila Box Riparian National Conservation Area. The Advisory Committee will assist with preparation of the Gila Box Coordinated Resource Management Plan by identifying issues and concerns, and by assisting with development of a monitoring strategy using Limits of Acceptable Change (LAC).

The agenda for the meeting will include:

1. Introduction of Gila Box work group members, which include Advisory Committee and BLM planning team.
2. Discussion of the Affected Environment for the NCA.
3. Slide show of the Gila Box.
4. Review issues and concerns identified in public scoping meetings.
5. Identify roles and responsibilities of work group members.

The meeting is open to the public. Interested persons may make oral statements to the Committee between 3 and 4 p.m., or may file written statements for consideration by the Committee. Anyone wishing to make an oral statement must contact the BLM Gila Resource Area Manager by Friday, October 11, 1991.

Summary minutes of the meeting will be maintained in the Safford District Office and will be available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: August 27, 1991.

Frank Rowley,

Acting District Manager.

[FR Doc. 91-21423 Filed 9-6-91; 8:45 am]

BILLING CODE 4310-32-M

[NV-930-91-4320-13]

Las Vegas District Grazing Advisory Board Meeting; Nevada

Notice is hereby given in accordance with Public Law 92-463 that a meeting of the Las Vegas District Grazing Advisory Board will be held Friday, September 27, 1991. The meeting will begin at 9 a.m. in the conference room of the Las Vegas District Office, 4765 W. Vegas Drive, and continue until 3:00 p.m.

The agenda is as follows:

1. Welcome and introductions.
2. Range improvement program, status update, and proposals.
3. Update on the Stateline RMP and time frames.
4. Final biological opinion of US Fish and Wildlife Service on livestock grazing in Desert tortoise habitat.
5. Allotment evaluations, decisions, and agreements planned and issued in the Stateline and Caliente Resources Areas.
6. Public comments.
7. Arrangements for next meeting.

The meeting is open to the public. Interested persons may make oral comments to the board during the public comment period on the day of the meeting or they may file written statements for the board's consideration during the meeting. Notify the District Manager, BLM, 4765 West Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, if you wish to make an oral statement to the Board. Summary minutes of the board meeting will be maintained at the Las Vegas District Office. The minutes will be available for public inspection during regular office hours (7:30 a.m. to 4:15 p.m.) within 30 days after the meeting.

Ben Collins,

District Manager, Las Vegas.

[FR Doc. 91-21419 Filed 9-6-91; 8:45 am]

BILLING CODE 4310-HC-M

[CA-060-01-5440-10-B021; CA-28403]

California Desert District, Notice of Realty Action, Proposed Exchange of Public and Private Lands, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action CACA 28403, Proposed Exchange of Public and Private Lands.

SUMMARY: The following described public lands in San Bernardino County are being considered for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976; 43 U.S.C. 1716:

San Bernardino Meridian, California

T. 5 N., R. 13 E.,
Section 8: All;
Section 15: All;
Section 22: W½;

The selected public lands aggregate 1600.00 acres.

In exchange for these lands, the United States will acquire the following described offered private lands located within the Cadiz Dunes and Piute Valley area from Rail-Cycle, LP, a partnership of Waste Management of North America and Atchison, Topeka and Santa Fe Railroad Company:

San Bernardino Meridian, California

T. 4 N., R. 15 E.,
Section 33: All;
T. 13 N., R. 19 E.,
Section 29: All;

The offered non-Federal lands aggregate 1280.00 acres.

The purpose of this exchange is to transfer public lands in the southern part of the Needles Resource Area near the AT&SF railroad tracks in the vicinity of Bristol Lake for land owned by AT&SF in the Cadiz Dunes and Piute Valley areas. Rail-Cycle proposes intensive development of the land to dispose of nonhazardous materials resulting from a recycling program for the City of Los Angeles.

The exchange will be completed on an equal value basis. Full equalization of values will be achieved through acreage adjustment. The exchange will not be completed until all necessary field inventories, environmental assessments, and mineral reports are completed.

The public lands to be conveyed will be subject to the following terms and conditions:

A. Reservations to the United States.

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. Those rights encompassed by railroad grant patent 5090 issued July 27, 1908 and which affects lands in a portion of the S½S½of Section 8 and a portion of the N½N½of Section 15 within T. 5 N., R. 13 E., SBM.

All minerals will be conveyed unless following the completion of mineral reports, the authorized officer determines whether reservation of all or part the minerals, or the exchange, is in the public interest.

B. Third Party Rights. The public lands would be patented subject to:

1. Those rights for construction, operation and maintenance of an underground natural oil pipeline and related equipment granted to the All-American Pipeline Company by right-of-way Serial No. CACA 14013 under the Act of February 25, 1920, as amended (30 U.S.C. 185).

2. Mining Claim Serial Nos. 33345PL and 33346PL located by National Chloride Co. on December 21, 1957 within T. 5 N., R. 13 E., SBM, Section 22: W½. The exchange will not be completed until these claims are relinquished, or transferred to the proponent.

As provided in 43 CFR 2201.1(b), the publication of this notice in the Federal Register shall segregate, subject to existing valid rights, the public lands described herein from all other forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws. The segregative effect will terminate upon issuance of a conveyance document, upon publication in the Federal Register of a termination of the segregation, or two years from the date of this publication, which ever occurs first.

For detailed information concerning this exchange contact Ken McMullen, Needles Resource Area, at (619) 326-3896. For a period of 45 days after publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507-0714. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: August 26, 1991.

Gerald E. Hillier,

District Manager.

[FR Doc. 91-21420 Filed 9-6-91; 8:45 am]

BILLING CODE 4310-40-M

[ID-060-01-4212-13; IDI-28567]

Realty Action; Exchange of Public Lands in Bonner County and Kootenai County; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public lands in Bonner County and Kootenai County, Idaho.

SUMMARY: This notice is to advise the public that the Bureau Empire Resource Area Coeur d'Alene District of the Bureau of Land Management and J.D. Lumber, Inc., are proposing a land exchange. The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Boise Meridian, Idaho

T. 48 N., R. 1 E.,
Sec. 1, Lots 6 and 7, N½SW¼, SE¼SW¼, SE¼
Sec. 8, S½NW¼
Sec. 12, NE¼NW¼
T. 48 N., R. 1 W.,
Sec. 6, Lots 9-11, SE¼SW¼, NW¼SE¼

The area described above aggregates approximately 630.40(±) acres in Kootenai County, Idaho.

In exchange for these lands, the United States will acquire the following described lands from J.D. Lumber, Inc.:

Boise Meridian Idaho

T.56 N., R. 1 E.,
Sec. 7, Lot 5, E. 790 ft. of the SW¼SE¼, E½SE¼ and those portions of the E½NE¼ and Lots 1 and 4 lying S. of the Glencary Bay County Road, less Tax Lot 4.

The area described above aggregates approximately 210 acres in Bonner County, Idaho. The United States will also acquire another parcel from J.D. Lumber to be identified at a later date.

The purpose of the land exchange is to benefit the public interest by obtaining important resource values. The public lands to be exchanged are isolated and difficult to manage parcels with limited resource values. The private lands being offered have very important values for timber, access, wildlife, and recreation that merit acquisition for public ownership. The exchange is consistent with the Bureau of Land Management land use plans and the public interest will be well served by making this exchange. Final determination on disposal will await completion of an environmental analysis, which will be made available to the public.

The value of the lands to be exchanged will be approximately equal as outlined in the Assembled Land Exchange Agreement.

The exchange will be subject to:

1. All valid existing rights, including any right-of-way, easement, permit or lease of record.

2. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. A reservation to the United States of a railroad right-of-way granted to the Washington and Idaho Railroad on November 27, 1888 under serial number I-816.

The publication of this notice in the Federal Register will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant. The segregative effect of this Notice will terminate upon issuance of patent or in two years, whichever occurs first.

ADDRESSES: Detailed information concerning the exchange is available for review at the Coeur d' Alene District Office, 1808 North Third Street, Coeur d'Alene, Idaho 83814.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: August 27, 1991.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 91-21421 Filed 9-6-91; 8:45 am]

BILLING CODE 4310-GG-M

[AZ-040-01-4333-02 RPRN]

Scoping Meetings for Gila Box Riparian National Conservation Area Coordinated Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: Pursuant to 40 CFR 1506.6 (b), meetings are scheduled to solicit public input on issues and concerns prior to preparation of the Gila Box Coordinated Resource Management Plan.

DATES: Tuesday, October 1, 1991, 7-9 p.m. (Safford) Thursday, October 3, 1991, 7-9 p.m. (Clifton)

ADDRESSES: BLM Safford District Office, 425 E. 4th Street, Safford, Arizona (October 1) Clifton Town Council Chambers, 200 N. Coronado Blvd., Clifton, Arizona (October 3)

FOR FURTHER INFORMATION: Meg Jensen, BLM Gila Resource Area Manager, 425 E. 4th Street, Safford, Arizona. Telephone (602) 428–4040.

SUPPLEMENTARY INFORMATION: The Gila Box Riparian National Conservation Area (NCA) was designated by the Arizona Desert Wilderness Act of 1990, which also requires the preparation of a management plan for the NCA. A draft Coordinated Resource Management Plan will be written in 1992, and these scoping meetings will begin the process of gathering public input for the plan.

A summary of the meetings will be maintained in the Safford District Office and will be available for public review (during regular business hours) within 30 days following the meetings.

Those wishing to provide input who cannot attend either meeting may submit written comments to Meg Jensen at the above address by October 1, 1991.

Dated: August 27, 1991.

Frank Rowley,

Acting District Manager.

[FR Doc. 91–21422 Filed 9–6–91; 8:45 am]

BILLING CODE 4310–32–M

[UT–050–01–4120–08]

Call for Coal and Other Resource Information

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for Coal and Other Resource Information to be included in the Inventory for the Resource Management Plan.

SUMMARY: The Henry Mountain Resource Area of the Richfield District of Utah is undertaking a resource planning effort and Environmental Statement scheduled for completion in 1993 and is calling for coal and other resource information. The information should be submitted by December 15, 1991 to be considered in the planning effort.

SUPPLEMENTARY INFORMATION: Those having information that they think should be considered in the preparation of the Resource Management plan should contact Francis Rakow or the project manager 801–542–3461 or write to Henry Mountain Resource Area, P.O. Box 99, Hanksville, Utah 84734.

Dated: August 28, 1991.

Jerry W. Goodman,

Richfield District Manager.

[FR Doc. 91–21418 Filed 9–6–91; 8:45 am]

BILLING CODE 4310–DQ–M

Bureau of Land Management

[MT–060–01–4111–08–MBPP]

Extension of Public Comment Period and Additional Public Meetings for the Judith Valley Phillips Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplement to the notice of availability.

SUMMARY: This notice supplements the "Availability of the Draft Judith Valley Phillips Resource Plan and Environmental Impact Statement" published in the **Federal Register**, Volume 56, No. 120, page 28571, June 21, 1991.

This supplement extends the public comment period to December 15, 1991 and announces two additional public meetings concerning the Draft RMP/EIS:

October 1, 1991, 7 p.m., Villa Theater, Malta, MT.

October 2, 1991, 7 p.m., Fergus High School, Lewistown, MT.

ADDRESSES: Written comments on the document should be addressed to: B. Gene Miller, Associate District Manager, Bureau of Land Management, Lewistown District Office, P.O. Box 1160, Lewistown, Montana 59457–1160.

FOR FURTHER INFORMATION CONTACT: Jerry Majerus, RMP/EIS Team Lead, Lewistown District Office, P.O. Box 1160, Lewistown, Montana 59457–1160, (406) 538–7461.

Dated: August 28, 1991.

David L. Mari,

District Manager.

[FR Doc. 91–21424 Filed 9–6–91; 8:45 am]

BILLING CODE 4310–DN–M

[MT–930–4214–10; MTM 012788, MTM 1171, and MTM 41810]

Proposed Continuation of Withdrawals; Montana

Correction

In notice document 91–17173 appearing on page 33304 in the issue of Friday, July 19, 1991, make the following correction:

The description heading "Beaverhead National Forest" should read "Deerlodge National Forest."

Dated: August 29, 1991.

[FR Doc. 91–21425 Filed 9–6–91; 8:45 am]

BILLING CODE 4310–DN–M

Fish and Wildlife Service

Taking of Walruses and Polar Bears in the Chukchi Sea, Alaska, Incidental to Oil and Gas Exploration

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service (Service) has issued a Letter of Authorization (LOA) that will allow the incidental, but not intentional, take of small numbers of walruses and polar bears during open water exploration for oil and gas in the Chukchi Sea adjacent to the coast of Alaska.

DATES: The LOA is effective from August 8, 1991, to December 31, 1991.

ADDRESSES: The LOA is available for public inspection upon request in the following Service offices: Marine Mammals Management, 4230 University Drive, Suite 310, Anchorage, Alaska 99508, and Division of Fish and Wildlife Management Assistance, 4401 North Fairfax Drive, Arlington Square, room 840, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Jon Nickles, Marine Mammals Management, Fish and Wildlife Service, 4230 University Drive, suite 310, Anchorage, Alaska 99508, Telephone (907) 561–1239.

SUPPLEMENTARY INFORMATION: Notice is being given that on August 8, 1991, the Service issued a LOA that allows the incidental, but not intentional, take of small numbers of walruses and polar bears during open water oil and gas exploration in the Chukchi Sea adjacent to the coast of Alaska. The LOA was issued under the authority of section 101(a)(5) of the Marine Mammal Protection Act (MMPA), regulations at 50 CFR 18.27, and recently issued regulations at 50 CFR part 18, Subpart I—Taking of Marine Mammals Incidental to Oil and Gas Exploration Activities in Alaska.

The LOA was issued to Chevron U.S.A., Inc., P.O. Box 36366, Houston, Texas 77236. It is valid for Calendar Year 1991 and is subject to the provisions of the MMPA and the above identified regulations in 50 CFR part 18.

Issuance of the LOA is based on findings that the total taking will have a negligible impact on walrus and polar bear species, and will not have an unmitigable adverse impact on the availability of these species for subsistence uses by Alaskan Natives.

Dated: August 28, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-21417 Filed 9-6-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

[Des-91-24]

Notice of Availability of the Draft Environmental Impact Statement for the Wilderness Recommendation Voyageurs National Park, Minnesota

ACTION: Notice of availability of the draft environmental impact statement (DEIS) for the wilderness recommendation, Voyageurs National Park, Minnesota and the holding of public hearings.

For Voyageurs National Park, six wilderness alternatives were examined ranging from no action, which means no wilderness designation, to designating all suitable lands within the study area as wilderness. Alternative 2, the proposed action, recommends 127,438 acres or just under 99 percent of the study area for wilderness designation.

DATES AND ADDRESSES: The public is invited to comment on the DEIS The public comment period will end November 5, 1991. Written comments should be mailed to Mr. Don Castleberry, Regional Director, Midwest Regional Office 1709 Jackson Street, Omaha, Nebraska 68102. Comments must be received by November 5, 1991, to be considered in the development of the final environmental impact statement.

Formal hearings have been scheduled to receive oral and written comments on this wilderness DEIS as follows:

October 7, 1991, Monday: 7 p.m. at the Rainy Lake Visitor Center, International Falls, Minnesota.

October 8, 1991, Tuesday: 7 p.m. at the City Hall meeting room, Orr, Minnesota.

October 9, 1991, Wednesday: 7 p.m. at the Luxeford; 1101 LaSalle Avenue; Minneapolis, Minnesota.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Clary, Superintendent Voyageurs National Park, HCR9, PO Box 600, International Falls, Minnesota 56649, phone number (218) 283-9821. The Headquarters at Voyageurs National Park will have reading copies available to the public as will the National Park Service's Midwest Regional Office (address above), and the Public Affairs Office, National Park Service, U.S. Department of the Interior, 18th and C Streets, NW., room 3424, Washington, DC 20240.

Dated: August 29, 1991.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

[FR Doc. 91-21480 Filed 9-6-91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) has been submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Darlene Proctor (202) 275-7322. Comments regarding this information collection should be addressed to Darlene Proctor, Interstate Commerce Commission, room 2203, Washington, DC 20423 and to Wayne Brough, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Type of Clearance: New Collection.

Bureau/Office: Office of Economics, Section of Energy/Environment.

Title of Form: Form letter/form notice, RE: Implementation of Environmental Laws.

OMB Form Number: 3120-_____(to be assigned).

Agency Form No.: N/A.

Frequency: At time of applying for benefit.

No. of Respondents: 300.

Total Burden Hours: (To be determined prior to implementation).

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-21456 Filed 9-6-91; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation: Quality Trailer Products Corporation, 633 Northwest Parkway, Azle, Texas 76020.

2. Wholly owned subsidiaries and State of Incorporation:

(I) DDR Machine Corporation, Texas.

(II) Mt. Pleasant Trailer Products, Inc., Texas.

(III) Trailer Products of Ocala, Texas.

(IV) Quality Running Gear, Texas.

(V) Trailer Products of West Point, Texas.

(VI) Quality Trailer Products of Seminole, Texas.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-21457 Filed 9-6-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-No. 332)]

Burlington Northern Railroad Company—Abandonment—in Otoe and Nemaha Counties, Nebraska; Findings

The Commission has found that the public convenience and necessity permit Burlington Northern Railroad Company to abandon its 21.35-mile line of railroad between milepost 6.00 near Arbor and milepost 26.54 near Cooper Spur, in Otoe and Nemaha Counties, NE.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: September 3, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-21582 Filed 9-6-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to CERCLA

In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1) as well as Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Harris*

Corporation, No. 91-624-CIV-ORL-19 was lodged with the United States District Court for the Middle District of Florida on August 28, 1991. This agreement resolves a judicial enforcement action brought by the United States against the defendant pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 42 U.S.C. 9606 and 9607, for the cleanup of the Harris Corporation Superfund Site ("Site") located in Palm Bay, Brevard County, Florida, and for the recovery of costs expended by the United States in connection with the Site.

The Consent Decree is entered between the United States and Harris Corporation, the current owner of the Site, and the owner at the time hazardous substances were disposed of at the Site. The Consent Decree requires Harris to implement the remedial action selected by the Environmental Protection Agency ("EPA") for the Site, be obligated for future costs, including oversight, and to reimburse the United States for its response costs at the Site.

The Department of Justice will receive for a period of (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Harris Corporation*, DOJ No. 90-11-3-620.

The Decree may be examined at the offices of the United States Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, and at the offices of the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1535, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 200530. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 10997, Washington, DC 20004, 202-347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $13.25 (25 cents per page reproduction costs) payable to Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-21426 Filed 9-6-91; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree in Clean Air Act Action

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Richard D. Hogan, individually, and doing business as Hogan Construction, Inc.*, Civil Action No. 91-908, was lodged with the United States District Court for the Western District of Oklahoma on June 19, 1991. This Consent Decree concerns a Complaint filed by the United States against Richard D. Hogan and Hogan Construction, Inc. to obtain civil penalties and injunctive relief under sections 112(c), 113 and 114(a)(1)(B) of the Clean Air Act for violations of the National Emissions Standard for Hazardous Air Pollutants for asbestos (the "asbestos NESHAP"). The defendants are Richard D. Hogan, individually, and Hogan Construction, Inc., a Texas corporation with its principal place of business in Fort Worth. The Consent Decree will settle the United States' claims arising from violations occurring during renovation of the Federal Correctional Institute located in El Reno, Oklahoma in April 1989.

The proposed Consent Decree requires that Hogan and Hogan Construction, Inc. pay civil penalties in the sum of $15,600. The proposed Consent Decree also requires that Hogan and Hogan Construction, Inc. employees comply with the asbestos NESHAP during future asbestos renovations and demolitions and complete approved asbestos worker training programs.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Richard D. Hogan, individually, and doing business as Hogan Construction, Inc.*, DOJ. Ref. No. 90-5-2-1-1431.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Oklahoma, room 4434, U.S. Courthouse and Federal Office Building, Oklahoma City, Oklahoma, 73102 and at the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, 75202. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., Washington, DC 20004, (202) 347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. When requesting a copy of the Consent Decree, please enclose a check in the amount of $3.25 (25 cents per page reproduction costs) payable to the "Consent Decree Library."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-21427 Filed 9-6-91; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 91-4]

Martin Steinberg, M.D.; Denial of Application

On November 16, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Martin Steinberg, M.D. (Respondent) of 300 S. Jackson Street, suite 203, Denver, Colorado 80209, proposing to deny his application, executed on February 1, 1989 (sic), for registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f).

Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner and subsequently reassigned to Administrative Law Judge Paul A. Tenney. During the course of prehearing procedures, Respondent withdrew his request for a hearing and instead submitted a written statement, in accordance with 21 CFR 1301.54(c), regarding his position on the issues raised by the Order to Show Cause.

On June 19, 1991, Judge Tenney terminated the administrative proceedings before him. After careful consideration of both the investigative file and Respondent's written statement, the Administrator of the Drug Enforcement Administration hereby enters his final order in this matter

based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that Respondent has been a practicing psychiatrist for approximately 34 years. In late 1989, an individual and his wife gave statements to the Denver Police Department alleging that Respondent knowingly maintained the individual's drug addiction by prescribing him various controlled substances on a regular basis over a 2-year period. In late 1986, the husband sustained bone fractures in his right arm, and was given various controlled substances, while hospitalized, by his orthopedic surgeon. Upon his release, the individual believed he was addicted to drugs. In the fall of 1987, the individual went to Respondent for counseling and asked for Percodan, a Schedule II controlled substance. Respondent issued him prescriptions for Percodan, Dexedrine and Ritalin, also Schedule II controlled substances, on a regular basis, up until the time the individual and his wife gave their statements to the Denver Police Department.

The individual stated that he never filled out a patient/medical history sheet, nor was he ever physically examined by Respondent. Respondent did not maintain a patient chart regarding his treatment of the individual.

During the course of investigating these allegations, it was discovered that Respondent has not been registered with the Drug Enforcement Administration to handle controlled substances since 1972. Consequently, on January 26, 1990, DEA Investigators met with Respondent and informed him that he was not currently authorized to handle controlled substances. In addition, Respondent was questioned regarding his prescribing of controlled substances to the aforementioned individual. Respondent stated that he had been treating the man's family for approximately 15 years for various reasons, and that he had been treating the individual for approximately two years for serious bone pain. During the interview, Respondent conceded that he did not follow his normal procedures with the individual, did not maintain a patient chart, and did not maintain a record of the controlled substances he prescribed to the man. The Investigators subsequently contacted the individual's orthopedic surgeon, who did not recall Respondent consulting him regarding the individual's treatment. The orthopedic surgeon further stated that he discontinued prescribing controlled substances to the individual when it became apparent he was becoming addicted.

Following this meeting with DEA Investigators, Respondent submitted an application for a DEA registration dated February 1, 1989 [sic], and received by DEA on February 14, 1990. Surveys at various local pharmacies revealed that Respondent wrote approximately 12 controlled substance prescriptions after January 26, 1990, when he was told that he was not authorized to handle controlled substances.

In his written statement, Respondent stated that since he never received a request for renewal of his DEA Certificate of Registration, he believed that his DEA number was a lifetime registration, and renewal was unnecessary. The Administrator concludes that Respondent was remiss regarding the renewal of his DEA registration. First, registrants are required to be familiar with Federal regulations relating to controlled substances. The regulations clearly indicate that registration with DEA is not lifetime. Until recently, practitioner registrations were required to be renewed annually. Now, such registrations must be renewed every three years. Second, as the Certification of Non-Registration which is a part of the investigative file indicates, a renewal application is automatically sent by DEA to the registrant approximately 60 days prior to the expiration of his DEA registration. Finally, and most important, the actual DEA Certificate of Registration, which is possessed by the registrant, has an expiration date printed on it. Had Respondent looked closely at his Certificate of Registration even once, he would have realized that his DEA number was no longer valid.

Respondent next argues that he stopped writing prescriptions for controlled substances on January 26, 1990, after being told by DEA Investigators that his DEA registration was not valid, and it was not until after he received the cancelled check for his application fee that he issued the 12 controlled substance prescriptions. The Administrator does not find Respondent's explanation credible. The Drug Enforcement Administration did not even receive Respondent's application for registration until February 14, 1990. Several of the prescriptions were written before Respondent could have possibly received the cancelled check.

Regarding the prolonged prescribing of controlled substances to the individual discussed above, Respondent contends that he had counseled the individual throughout the past 16 years for various reasons, and that in the fall of 1989, the individual talked to Respondent regarding the pain from his fractured arm. Respondent stated that he tried methods, other than drugs, to deal with the pain, consulted with the individual's orthopedist, and tried to decrease the medication the individual was taking. This however, contradicts evidence in the investigative file. The individual's statement reflects that Respondent never tried to deal with the individual's medical problems, other than by prescribing controlled substances. The individual's orthopedist did not recall Respondent consulting him regarding treatment. Finally, prescriptions discovered at local pharmacies reveal that Respondent prescribed controlled substances for the individual on a regular basis beginning as early as March 1987, and continuing until the end of 1989.

The Administrator may deny an application for a DEA Certificate of Registration if he determines that the registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. See, *Henry J. Schwarz, Jr., M.D.*, Docket No. 88-42, 54 FR 16422 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87-47, 53 FR 23465 (1988); *David E. Trawick, D.D.S.*, Docket No. 86-69, 53 FR 5326 (1988).

The Administrator has carefully considered the evidence in this matter and concludes that Respondent's registration would be inconsistent with the public interest. Through his written statement, it appears that Respondent is attempting to tailor his defenses to the charges rather than accepting responsibility for his wrongdoing and

negligence. The evidence supports the conclusions that Respondent maintained a drug dependent individual on controlled substances for approximately two years; handled controlled substances for approximately 18 years without a valid DEA Certificate of Registration; and continued to issue prescriptions for controlled substances knowing that he was not properly authorized to do so.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b), hereby orders that the application for registration, executed on February 1, 1989 (sic), by Martin Steinberg, M.D., be, and it hereby is, denied. This order is effective September 9, 1991.

Dated: August 28, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-21437 filed 9-6-91; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 91-9]

Douglas E. Nalls, M.D.; Revocation of Registration

On January 31, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Douglas E. Nalls, M.D. (Respondent), 1012 Sero Estates Drive, Fort Washington, Maryland 20744, proposing to revoke DEA Certificate of Registration, BN1245403, issued to him at 1435 Fourth Street, SW., Apt. 802.B, Washington, DC 20024, and to deny any pending application for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Respondent's lack of authorization to practice medicine in the District of Columbia and that his continued registration was inconsistent with the public interest, as set forth in 21 U.S.C. 823(f).

Respondent, acting *pro se*, submitted a written request for a hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. In accordance with Judge Bittner's ruling, prehearing statements were submitted by both parties. Respondent also filed a motion for summary disposition alleging that he had no prior convictions relating to controlled substances, and that he maintained licenses to practice medicine in other jurisdictions. On March 15, 1991, Judge Bittner denied Respondent's motion.

On May 20, 1991, Government counsel filed a motion for summary disposition, based on Respondent's lack of state authorization to practice medicine in the District of Columbia. The administrative law judge then provided Respondent an opportunity to respond to the motion for summary disposition. Respondent did not file such a response. Judge Bittner considered the motion for summary disposition, and on June 12, 1991, issued her opinion and recommended ruling in this matter. No hearing was held, since no factual issues were involved. Neither side filed exceptions to the recommended ruling of the administrative law judge. On July 17, 1991, Judge Bittner transmitted the record to the Administrator.

The Administrator has considered this record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based on the following findings of fact and conclusions of law.

The administrative law judge found that, by order dated September 7, 1989, the Department of Consumer and Regulatory Affairs, Board of Medicine for the District of Columbia, revoked Respondent's license to practice medicine. Therefore, Respondent is without authority to practice medicine or handle controlled substances in the District of Columbia, the jurisdiction in which he is registered.

State authorization to handle controlled substances is a prerequisite to registration of a practitioner under the Federal Controlled Substances Act. 21 U.S.C. 823(f). The DEA has consistently held that when an applicant or registrant is without authority to handle controlled substances under the laws of the State in which he practices, or proposes to practice, DEA is without authority to issue a Federal registration. See, *Emerson Emory, M.D.*, Docket No. 85-46, 51 FR 9543 (1986); *Michael Alva Marshall, M.D.*, Docket No. 85-16, FR 8046 (1986); *Dennis Howard Harris, M.D.*, Docket No. 84-19, 49 FR 39930 (1984).

In such cases, a motion for summary disposition is properly entertained and must be granted. It is settled law that when no fact question is involved, or when the facts are agreed, a plenary adversary administrative proceeding is not obligatory, even though a pertinent statute prescribes a hearing. In such situations, the rationale is that Congress does not intend administrative agencies to perform a meaningless task. *United States* v. *Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971).

The administrative law judge concluded that, based upon Respondent's lack of state authorization to handle controlled substances, his DEA Certificate of Registration must be revoked.

The Administrator has examined the entire record and adopts the recommended findings and conclusions of the administrative law judge. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BN1245403, previously issued to Douglas E. Nalls, M.D., be, and it hereby is, revoked. Any pending applications for renewal of such registration shall be, and hereby are, denied. This order is effective October 9, 1991.

Dated: August 28, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-21438 Filed 9-6-91; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 90-50]

Super-Rite Drugs; Denial of Application for Registration

On April 13, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Super-Rite Drugs (Respondent) of Decatur, Georgia, proposing to deny its application for registration. The statutory basis for seeking the revocation of the registration was that Respondent's registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f).

Respondent, through counsel, filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Newnan, Georgia, on January 16, 1991. On May 15, 1991, in her opinion and recommended ruling, findings of fact, conclusions of law, and decision, the administrative law judge recommended that the Respondent's application for DEA registration be denied.

No exceptions were filed to Judge Bittner's opinion. On July 1, 1991, the administrative law judge transmitted the record to the Administrator. The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and

conclusions of law as hereinafter set forth.

The administrative law judge found that on December 6, 1986, the applicant and owner of the Respondent pharmacy, Mr. Julius Williams III, was stopped by police for speeding and that he was subsequently arrested for the possession of cocaine, which had been found in his vehicle. On August 21, 1987, Mr. Williams pled guilty in the Superior Court of the Brunswick Judicial Circuit in Brunswick, Georgia, to one felony count relating to controlled substances, i.e., the possession of cocaine. He was sentenced to a three-year probation under the state's First Offender Act and fined.

A hearing officer appointed by the Georgia State Board of Pharmacy held a hearing regarding Respondent's license to practice pharmacy. On January 13, 1988, the Board issued a consent order in which it placed Mr. Williams on probation for two years, during which period he would be required to undergo random alcohol and drug screening.

On August 23, 1988, Mr. Williams failed to provide a urine sample to Georgia Drugs and Narcotics agents under the terms of the consent order. As a result, the Georgia Board of Pharmacy issued Mr. Williams an Order of Summary Suspension. A subsequent hearing was held, and on November 30, 1988, the Georgia Board of Pharmacy issued a final decision which extended Mr. Williams' probation for another year, and ordered that he be placed on weekly substance abuse screenings for a period of 90 days.

Mr. Williams testified that he had used drugs recreationally for about fifteen years, but that he had stopped using controlled substances by October of 1985. He also stated that the cocaine possession charge was a result of the cocaine having been left in the car by Mr. Williams' brother. As to the failure to give a random drug sample, Mr. Williams asserted that he delayed giving a sample until he could contact his lawyer and that he later submitted his own laboratory test. Mr. Williams further submitted that his guilty plea to cocaine possession did not constitute a conviction under the Georgia statute, since the case was eventually discharged without adjudication of guilt on February 14, 1990, upon his satisfactory completion of probation.

The Administrator may revoke a DEA Certificate of Registration or deny an application for such a registration if he determines that the registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct as may threaten the public health or safety.

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. See, *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 Fed. Reg. 16422 (1989); *Neveille H. Williams, D.D.S.*, Docket No. 87–47, 53 Fed. Reg. 23465 (1988); *David E. Trawick, D.D.S.*, Docket No. 86–69, 53 Fed. Reg. 5326 (1988).

Judge Bittner found, in part, that factor (3) of 21 U.S.C. 823(f), supra, applied in this case. The Administrator does not concur with this particular finding. Although Mr. Williams entered a guilty plea to a drug-related felony, his actions did not relate to the manufacture, distribution, or dispensing of controlled substances. However, I find that the record still contains substantial evidence to support the remaining findings.

The administrative law judge found that Mr. Williams' testimony on his prior history of drug use demonstrated a cavalier attitude toward the law, that his explanation of the cocaine possession incident was inconsistent, and his actions during the drug screening episode suggested that he was either disrespectful of the State Board's authority or expected a positive test result. The administrative law judge further found that the record established that Mr. Williams is either unwilling or unable at this time to carry out substantial responsibilities of DEA registration. Judge Bittner concluded that the Respondent's registration would be inconsistent with the public interest and that his application for DEA registration should be denied.

With the single exception noted, the Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in their entirety. Respondent's registration is clearly inconsistent with the public interest. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that Super-Rite Drugs' pending application for registration be, and it hereby is, denied. This order is effective October 9, 1991.

Dated: August 28, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91–21435 Filed 9–6–91; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91–79]

NASA Advisory Council (NAC), History Advisory Committee (HAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, History Advisory Committee.

DATES: November 6, 1991, 8:30 a.m. to 4:30 p.m.; and November 7, 1991, 8:30 a.m. to 2:30 p.m.

ADDRESSES: Management Conference Center, Goddard Space Flight Center, Greenbelt, MD 20771.

FOR FURTHER INFORMATION CONTACT: Dr. Roger D. Launius, History Division, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–8300.

SUPPLEMENTARY INFORMATION: The NAC History Advisory Committee was established to provided overall guidance to the NASA History Division on historical research and writing activities. The HAC, chaired by Dr. Arthur L. Norberg, is composed of seven members. The meeting will be open to the public up to seating capacity of the room (approximately 40 persons including the committee members and other participants.) It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants.

TYPE OF MEETING: Open.

Agenda

November 6, 1991

8:30 a.m.—Opening Remarks.
9:00 a.m.—NASA and the History of the Space Shuttle.
10:20 a.m.—Documentary Sources and Archives.
1:30 p.m.—Tour of Goddard Space Flight Center.

3:10 p.m.—Disseminating Housing: Insider/Outsider Perspectives.
4:30 p.m.—Concluding Remarks.

November 7, 1991

8:30 a.m.—Opening Remarks.
8:45 a.m.—The Many Cultures of NASA.
10:30 a.m.—The Challenge of Writing Contemporary History.
2:30 p.m.—Adjourn.

Dated: September 3, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-21505 Filed 9-6-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON AMERICAN INDIAN, ALASKA NATIVE, AND NATIVE HAWAIIAN HOUSING

Meeting

AGENCY: The National Commission on American Indian, Alaska Native, and Native Hawaiian Housing.

ACTION: Notice of public hearings and meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on American Indian, Alaska Native, and Native Hawaiian Housing announces the forthcoming public hearings and meeting of the Commission.

DATES: September 19-21, 1991, 9 a.m. to 5 p.m.

ADDRESSES: Hyatt Regency Hotel, 400 New Jersey Avenue, NW., Washington, DC 20001, (202) 737-1234.

FOR FURTHER INFORMATION CONTACT: Lois V. Toliver, Administrative Officer, (202) 275-0045.

TYPE OF MEETING: Open.

AGENDA: Call to Order, Roll Call, Chairman's Message, Introduction of Commissioners and Guests, Presentations from Invited Guests.

Lois V. Toliver,

Administrative Officer.

[FR Doc. 91-21434 Filed 9-6-91; 8:45 am]

BILLING CODE 6820-07-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-325 and 50-324]

Carolina Power & Light Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-71 and DRP-62 issued to the Carolina Power & Light Company (the licensee) for the operation of the Brunswick Steam Electric Plant, Units 1 and 2 (BSEP1 and BSEP2), located in Brunswick County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The amendments would consist of changes to the operating licenses to extend the expiration date to September 8, 2016, for BSEP1 and to December 27, 2014, for BSEP2. The application for a license amendment was submitted August 17, 1987, as supplemented May 30 and June 29, 1990, and August 8 and August 29, 1991. The Commission's staff has prepared an Environmental Assessment of the proposed action, dated August 30, 1991.

Summary of Environmental Assessment

The Commission's staff has reviewed the potential environmental impact of the proposed change in expiration date of the operating licenses for BSEP1 and BSEP2. This evaluation considered the previous environmental studies, including, the Final Environmental Statement for BSEP1 and BSEP2, and more recent NRC Policy.

Radiological Impacts

The staff concludes that the Exclusion Area (owned and controlled by the licensee), the Low Population Zone (LPZ), the area within 5 miles of the site, and the nearest population center distance will probably remain unchanged from those described in the Brunswick Steam Electric Plant (BSEP) Final Environmental Statement (FES). Based on the 1980 census, indications are that the population density within the LPZ surrounding the site has increased more slowly than projected in the original Final Safety Analysis Report (FSAR), which was based on the 1970 census. For example, for the year 1996, the projected population within 5 miles of the site based on the 1980 census is 69 percent of the number projected from the 1970 census.

The additional period of plant operation, approximately 6 years and 7 months for Unit 1 and 4 years and 10 months for Unit 2, would not significantly affect the probability or consequences of any reactor accident. Station radiological effluents to unrestricted areas during normal operation have been well within Commission regulations regarding as-low-as-reasonably-achievable (ALARA) limits and are indicative of future releases. Future technologies may serve to further reduce effluents from the site. The proposed additional years of reactor operation do not increase the annual public risk from reactor operation.

With regard to the occupational exposure for normal plant operations, the licensee is striving for further dose reduction utilizing ALARA programs, dose-saving plant modifications, and the use of robotics to reduce increased doses from probable increased maintenance and corrosion product build-up. Accordingly, annual radiological impacts on man, both offsite and onsite, are not more severe than those previously estimated in the FES, and the staff's previous cost-benefit conclusions remain valid.

With respect to normal conditions of transport and possible accidents during transport, the environmental impacts attributable to transportation of fuel and waste from BSEP would be bounded as set forth in Summary Table S-4 of 10 CFR 51.52. The values in Table S-4 would continue to represent the contribution to the environmental costs of transportation costs associated with plant operation.

Non-Radiological Impacts

The Commission has concluded that the proposed extensions will not cause a significant increase in the impacts to the environment and will not change any conclusions reached by the Commission in the FES.

Finding of No Significant Impact

The Commission has reviewed the proposed changes to the expiration date of the Facility Operating License relative to the requirements set forth in 10 CFR part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to the action, see (1) the application for amendment dated August 17, 1987, as supplemented May 30 and June 29, 1990, and August 8 and August 29, 1991, (2) the "Final Environmental Statement Related to the Continued Construction and Proposed Issuance of an Operating License for the Brunswick Steam Electric Plant, Units 1 and 2," issued by the United States Atomic Energy Commission in January 1984, and (3) the

Environmental Assessment dated August 30, 1991.

These documents are available for public inspection at the Commission's Public Document Room, 2121 L Street, NW., Washington, DC, and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Dated at Rockville, Maryland, this 30th day of August 1991.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects—I/II.

[FR Doc. 91-21521 Filed 9-6-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-440-OLA-3; ASLBP No. 91-650-13-OLA-3]

The Cleveland Electric Illuminating Co. et al.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

The Cleveland Electric Illuminating Company, et al., Perry Nuclear Power Plant, Unit 1 (Surveillance Capsule Withdrawal Schedule)

This Board is being established pursuant to a notice published by the Commission on July 24, 1991, in the **Federal Register** (56 FR 33950-33952 and 33961-33962) entitled, "Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The proposed amendment would, *inter alia*, remove the reactor vessel surveillance program withdrawal schedule from the TSs and would relocate the schedule in the Perry Updated Safety Analysis Report (USAR) in accordance with NRC GL 91-01.

The Board is comprised of the following administrative judges:

Thomas S. Moore, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR 2.701.

Issued at Bethesda, Maryland, this 29th day of August 1991.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91-21522 Filed 9-6-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-335 and 50-389]

Florida Power & Light Co.; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Florida Power and Light Company (the licensee) for amendments to Facility Operating License Nos. DPR-67 and NPF-16 issued to the licensee for operation of the St. Lucie Plant, Unites 1 and 2 located in St. Lucie County, Florida. A Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Determination and Opportunity for Hearing was published in the **Federal Register** on January 27, 1988 (53 FR 2315).

The purpose of the licensee's amendment request was to revise certain surveillance requirements dealing with moderator temperature coefficient.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated August 30, 1991.

By October 9, 1991, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petition should also be sent to the Office of the General Council, U.S. Nuclear regulatory Commission, Washington, DC 20555, and to Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated December 22, 1987, as modified by letter dated August 27, 1990, and (2) the Commission's letter to the licensee dated August 30, 1991.

These documents are available for public inspection at the Commission's Public Document Room and the Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 30th day of August.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 91-21523 Filed 9-6-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

Toledo Edison Company, et al.; (Davis-Besse Nuclear Power Station, Unit No. 1)

Exemption

I

The Toledo Edison Company, Centerior Service Company and the Cleveland Electric Illuminating Company (the licensees), are the holders of Facility Operating License No. NPF-3 (the license) which authorizes operation of the Davis-Besse Nuclear Power Station, Unit No. 1. The license provides, among other things, that it is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor located at the licensee's site in Ottawa County, Ohio.

II

Title 10 of the Code of Federal Regulations (10 CFR) part 20, appendix A, "Protection Factors for Respirators," establishes protection factors of air-purifying respirators for protection against particulates only. Furthermore, footnote d-2(c) states, "No allowance is to be made for the use of sorbents

against radioactive gases or vapors." This restriction was needed since an inadequate data base had existed for evaluating the complex interaction of many factors affecting the service life and removal efficiency of radioactive gases and vapors by sorbent canisters. Also, due to the lack of a data base, a National Institute for Occupational Safety and Health/Mine Safety and Health Administraton (NIOSH/MSHA) certification schedule has not been established to ensure that canisters meet acceptable performance criteria.

Section 20.103(e) of 10 CFR part 20 allows the Commission to authorize the use of respiratory equipment in lieu of an NIOSH/MSHA certification when such an action is justified based on adequate testing of material and performance characteristics. An application by a licensee for this authorization must include a demonstration by testing, or on the basis of reliable test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use. The licensee has made such an application.

Section 20.501 of 10 CFR part 20 allows the Commission to grant such exemption from the requirements of the regulations in 10 CFR part 20 as it determines is authorized by law and will not result in undue hazard to life or property.

By letter dated December 5, 1989, as supplemented July 12 and 29, 1991, the licensee requested an exemption based on 10 CFR 20.501 to allow the use of radioiodine Mine Safety Appliance Company (MSA) GMR–I canisters with a protection factor of 50 for personnel respiratory protection. In support of the exemption request, the licensee cited test results, and a quality assurance plan that satisfies the recommended qualification process of NUREG/CR–3403, "Criteria and Test Methods for Certifying Air-Purifying Respirator Cartridges and Canisters Against Radioiodine."

The NRC staff evaluated the information provided by the licensee to support the exemption request. The staff's safety evaluation on this matter relating to the use of a radioiodine protection factor of 50 for GMR–I canisters at Davis-Besse is being issued concurrently with this Exemption. The safety evaluation concludes that the licensee's proposed use of radioiodine MSA GMR–I canisters with certain usage restrictions and controls can result in significant dose savings over alternative methods while still providing effective protection.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.501, an exemption as requested by the licensee's letter of December 5, 1989, as supplemented July 12 and 29, 1991, is authorized by law and will not result in undue hazard to life or property. The Commission hereby grants an exemption from the restriction of 10 CFR part 20, appendix A, footnote d–2(c), and authorizes the use of the MSA GMR–I canister, with restrictions as shown in Attachment 1 to this Exemption. The Exemption is subject to modification by rule, regulation, or order of the Commission.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (56 FR 42075).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 29th day of August 1991.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

Attachment: Limitations, Usage Restrictions, and Controls

Limitations, Usage Restrictions, and Controls Applicable to the Use of MSA GMR–I Canister at the Davis-Besse Nuclear Power Station, Unit 1

1. A protection factor equal to 50 as a maximum value will be used.

2. The maximum permissible use time will be 8 hours after which the canister will be discarded. The use time will begin when the canister is unsealed and will include periods of non-exposure.

3. Canisters will not be used in the presence of organic solvent vapors. Painting or the use of organic substances will be prohibited while the GMR–I canister is in use.

4. Canisters will be stored in sealed, humidity barrier packaging in a cool, dry environment. The GMR–I canisters will be maintained in Class "A" storage (as defined in ANSI N45.2.2) except for those maintained for ready issuance in the respirator issue area.

5. Canisters will be used only with a full facepiece proven capable of providing the individual with a fit factor greater than 500 by a quantitative respirator fit test.

6. Canisters will not be used in total challenge concentrations of organic iodines and other halogenated compounds greater than 1 ppm, includng non-radioactive compounds.

7. Canisters will not be used in environments where temperatures exceed 110 °F. Temperatures at work locations where GMR–I canisters are in use will be measured each shift and/or coincidentally with operations which heat the work areas to assure that this limit is not exceeded.

In addition to the limitations and usage restrictions noted above, the following program verification measures during initial GMR–I canister implementation will be used:

a. Weekly whole body counts of individuals using the GMR–I canister for radioiodine protection will be performed;

b. A whole body count will be given to individuals who exceed 10 MPC hours in 7 consecutive days prior to their next entry into a radioiodine atmosphere;

c. If an individual measures any iodine uptake to the thyroid during a whole body count following use of GMR–I canisters, the individual will be restricted from further entries into radioiodine atmospheres pending a health physics evaluation;

d. A whole body count survey data base will be compiled to evaluate the results of the program.

[FR Doc. 91–21524 Filed 9–6–91; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Full Board Meeting

Pursuant to the Nuclear Waste Technical Review Board's (the Board) authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the full Board will hold a three-day meeting on October 8–10, 1991, in Las Vegas, Nevada. Issues to be addressed relate to the potential effects of thermal loading on the concept and design of a high-level radioactive waste repository. Representatives from the U.S. program, as well as from programs in Sweden, the Federal Republic of Germany, and Canada will participate in the three-day meeting. The meeting will be held at the St. Tropez Hotel, Monte Carlo Ballroom II & III, 455 E. Harmon Avenue, Las Vegas, Nevada 89109; (702) 369–5400. Sessions will run from 8:30 a.m. to 5 p.m., and are open to the public.

Tuesday, October 8, will be devoted to an overview of repository concepts proposed for use in several nations including in the United States, Sweden, the Federal Republic of Germany, and Canada. A representative from the French high-level waste disposal

program also may provide that country's perspective on repository design.

On Wednesday, October 9, presentations will focus first on the thermal considerations associated with repository design. The Board will hear from representatives of Sandia National Laboratories and Lawrence Livermore National Laboratory on near-field/far-field temperature changes and engineered barrier and waste package enhancements concepts. Presentations will proceed on the issues of uncertainty associated with high and low thermal loading, including geochemical uncertainties, near-field uncertainties, near-field hydrogeologic uncertainties, and biological resource concerns. Discussion of these issues will center on six questions: (1) What are the potential problems associated with each issue? (2) What is the significance of each of the potential problems? (3) What are the uncertainties associated with each of the potential problems? (4) Can these uncertainties be resolved? (5) How much time and money will be needed to resolve these uncertainties? (6) Will there be residual uncertainties?

During the latter part of Wednesday, discussion will shift to address the implications of higher versus lower thermal loading of a repository, including system-level considerations, design considerations, testing considerations, and the implications for engineered barriers and total system performance.

This discussion will continue on Thursday morning, October 10. Representatives from Science Applications International Corp., (SAIC) will make presentations on the conceptual considerations for the total system performance. Representatives for SAIC, the Nuclear Regulatory Commission, and the DOE will discuss potential regulatory considerations—including human health and safety, licensing, and legislative implications. The final session on Thursday, October 10, will be devoted to a round-table discussion of the aforementioned six critical questions about the effects of thermal loading on the performance of the repository.

Transcripts of the meeting will be available on a library-loan basis from Victoria Reich, Board librarian, beginning November 30, 1991. For further information, contact Karyn Severson, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235-4473.

Dated: September 4, 1991.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 91-21552 Filed 9-6-91; 8:45 am]

BILLING CODE 6820-AM-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Evidence of Marital Relationship—Living With Requirements.

(2) *Form(s) submitted:* G-124, G-124a, G-237, G-238 and G-238a.

(3) *OMB Number:* 3220-0021.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households, State or local governments.

(8) *Estimated annual number of respondents:* 1,100.

(9) *Total annual responses:* 1,100.

(10) *Average time per response:* .17818 hours.

(11) *Total annual reporting hours:* 196.

(12) *Collection description:* Under the RRA, to obtain a benefit as the spouse of an employee annuitant or as the widow(er) of the deceased employee, applicants must submit information to be used in determining if they meet the marriage requirements for such benefits. The collection obtains information supporting claimed common-law marriages, termination of previous marriages and residency requirements.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 91-21428 Filed 9-6-91; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Extension—Form S-2, File No. 270-62

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval extension of Form S-2. The form provides a basis for the Commission to fulfill its statutory responsibility to ensure that issuers of publicly traded securities provide investors and the marketplace with adequate information. Form S-2 affects approximately 334 filers for a total of 196,058 burden hours.

The estimated burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the cost of the Commission's rules and forms. Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimaed average burden hours for compliance with the Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-0072), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 21, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-21451 Filed 9-6-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29634; File No. S7-8-90]

Options Price Reporting Authority; Order Approving Amendment to the National Market System Plan

August 30, 1991.

Pursuant to rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), on May 13, 1991, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to its National Market System Plan to reflect changes to OPRA's existing News Service Direct Connection Agreement.

Notice of the proposed amendment was given in Securities Exchange Act Release No. 29215 (May 22, 1991), 56 FR 24433. The Commission received no comments on the proposal. This order grants approval of the proposed amendment.

Previously, all news services have received OPRA data directly from OPRA's processor in New York City and have paid the related direct access charge. Now, at least one news service has proposed accessing OPRA data indirectly, via a data feed from an OPRA vendor. In order to accommodate such indirect access, OPRA has changed the designation of its former "News Service Direct Connection Agreement" to "News Service Agreement," has added provisions expressly authorizing a news service to receive OPRA data from a vendor, and has adopted a new News Service Pass-Through Fee payable by indirect access news services in lieu of, and equal in amount to, the direct access fee. OPRA has characterized the other amendments to the Agreement as being for purposes of making updating changes or as being editorial and not substantive in nature.

The Commission finds that approval of this amendment is consistent with the Act, in particular, with sections 11A(a)(C)(ii) and (D), which provide for the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investor's orders, and contribute to the best execution of such orders. Further, the Commission finds that the amendments are consistent with rule 11Aa3-2(c)(2) because they are appropriate in the public interest and remove impediments to, and perfect mechanisms of, a national market system.

It Is Therefore Ordered, Pursuant to section 11A9(a)(3)(B) of the Act, that the amendments be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-21450 Filed 9-6-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29633; File No. S7-8-90]

Options Price Reporting Authority; Order Approving Amendment to Its National Market System Plan To Establish Fee for Radio Paging Market Data Service and Rider to Vendor Agreement To Be Used in Connection With the New Fee

August 30, 1991.

Pursuant to rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), on May 9, 1991,[1] the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to its national market system plan that would establish a new fee for vendors who wish to offer a radio paging market data service, and a rider to OPRA's vendor agreement to be used in connection with the new fee.[1] The amendment was noticed in Securities Exchange Act Release No. 29214 on May 22, 1991,[3] and the Commission received one comment (with OPRA's concurrence) in response thereto. This order grants permanent approval of the proposed amendment.

I. Description and Purpose of the Amendment

OPRA has authorized the establishment of a fee to be paid by vendors who furnish a radio paging market data service to the customers of radio paging companies or their own customers via text display radio pagers. The radio paging market data service fee is proposed to be established at a monthly rate of $1.00 for each text display paging device that is enabled to receive the service.

The purpose of the new fee is to permit vendors to offer to their customers a service whereby a limited amount of options market data may be transmitted via radio paging companies to text display pagers. Because only limited information can be transmitted to text display pagers as a result of bandwidth constraints, OPRA has determined not to require persons who have access to such pagers to become OPRA subscribers and pay subscriber fees to OPRA. Instead, OPRA intends to charge vendors who offer this service at the monthly rate of $1.00 per device. The fees OPRA will receive on this basis are estimated to be substantially below the aggregate subscriber fees that would be payable if a radio paging market data service could be offered only to OPRA subscribers.

II. Comments

As noted above, the Commission received one comment letter from Dow Jones Information Services ("DJIS").[4] Citing section 3 of the Rider, which states that the proposed new OPRA fee applies to "Options Information * * * broadcast to radio paging customers on a current or delayed basis," DJIS stated that it sought clarification from OPRA regarding OPRA's position on the applicability of OPRA subscriber agreements and fees to market data services that deliver only options information on a delayed basis. DJIS stated that—

> [B]ased upon discussions with OPRA and its counsel, Dow Jones understands, and OPRA concurs, that the Rider is intended, and should be read, as permitting any vendor who signs the Rider and agrees to pay the new fee to provide Options Information on a real-time or delayed basis through a radio paging service without requiring subscribers to such service to sign OPRA subscription agreements or pay subscriber fees to OPRA. Accordingly, the Rider in no way changes OPRA's long-standing position that a vendor who has signed the OPRA Vendor Agreement (and not the Rider) may offer market data delivery services (including radio paging services) containing Options Information that has been delayed at least 15 minutes without requiring subscribers to such services to sign OPRA subscription agreements or pay subscriber fees to OPRA.

In a separate concurrence,[5] OPRA stated that—

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[1] The amendment was originally filed on April 9, 1991. The original filing was withdrawn by the subsequent filing.

[2] OPRA requested that the radio paging service be put into effect summarily pursuant to rule 11Aa3-2(c)(4) under the Act. That section empowers the Commission to summarily put into effect on a temporary basis a Plan amendment "if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purpose of the Act."

[3] 56 FR 24434 (May 30, 1991).

[4] Letter from Paul T. Sheils, Group General Counsel, Dow Jones Information Services, to Jonathan G. Katz, Secretary, SEC, dated July 1, 1991.

[5] Letter from Michael L. Meyer, Schiff, Hardin & Waite, to Christine A. Sakach, Branch Chief,

Continued

The availability of the Radio Paging Rider and the related fee does not change the existing situation under OPRA's Vendor Agreement for a vendor who does not choose to sign the Rider * * *. Delayed data (i.e., last sale reports more than 15 minutes after the time the report was first transmitted by OPRA) may be retransmitted by such a vendor to any person, without any requirement for the recipient to be approved by OPRA or to pay fees to OPRA.

III. Discussion

Rule 11Aa3-2(c)(2) under the Act requires that the Commission approve an amendment to an effective national market system plan if it finds that the amendment is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act. Section 11A(a)(1)(c)(iii) of the Act states that "[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure * * * the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities." The Commission believes the amendment meets these standards.

The Radio Paging Rider and related fee were developed by OPRA to provide an alternative to vendors who wish to offer a service whereby a limited amount of options data is broadcast to handheld radio pagers, so that users of such a service would not be required to execute subscriber agreements with OPRA or pay subscriber fees to OPRA. Thus, a vendor may offer a radio paging service by including certain specified provisions in its customers' agreements for the benefit of OPRA, and paying to OPRA a radio paging device charge of $1.00 per device.

The comment filed by DJIS with the concurrence of OPRA clarifies that the fee would not apply to a vendor not choosing to sign the Rider who retransmits only delayed data.

The Commission believes that the amendment will serve the public interest by increasing the availability of market information to brokers, dealers and investors. The amendment simply provides an additional means of obtaining OPRA data that customers may elect to receive. Thus, the Commission finds that making this service and the related fee a permanent part of the OPRA plan is fair and reasonable, is appropriate in the public interest and to remove impediments to, and perfect the mechanism of, a national market system.

IV. Conclusion

For the reasons discussed above, the Commission finds the amendment to the OPRA national market system plan to be consistent with the Act, particularly section 11A(a)(1) and Rule 11Aa3-2.

It Is Therefore Ordered, Pursuant to section 11A of the Act, that the amendment to the OPRA national market system plan be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-21448 Filed 9-6-91; 8:45 am]

BILLING CODE 8010-01-M

National Market System Branch, Division of Market Regulation, SEC, dated July 1, 1991 (on behalf of OPRA).

[Release No. 34-29640; File No. SR-CBOE-91-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Clarifying the Exchange's Margin Requirements for Market-Makers

August 30, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 8, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Exchange Rule 12.3(b) allows Exchange Member Organizations, at their discretion, to grant certain exceptions to the margin requirements provided in Exchange Rule 12.3(a) for accounts maintained with the Member Organization. The CBOE proposes to amend Exchange Rule 12.3(b) by: (i) Deleting paragraph (A) from Exchange Rule 12.3(b)(2), which allows Member Organizations to establish a discretionary margin level for accounts used solely to effect transactions in securities for which the member is registered and acts as a market-maker or specialist; (ii) moving the margin requirements applicable to market-makers from Exchange Rule 30.41 to Exchange Rule 12.3(b)(2)(A)-(D); (iii) deleting from the exceptions provided in former paragraph 30.41(a) securities convertible into those in which the member makes a market; (iv) adding to former paragraph 30.41(a) the requirement that securities be "immediately and directly" convertible into permitted offset transactions; and (v) adding paragraph (E) to Exchange Rule 12.3(b)(2), which will allow for a mutually satisfactory margin deposit for a joint account carried by a Member Organization for a market-maker or specialist in which the Member Organization participates.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Currently, Exchange Rule 12.3(b)(2) contains the general margin requirements applicable to market-makers' and specialists' accounts. Exchange Rule 30.41, which was adopted as part of the CBOE's application to trade stocks, warrants and other securities, provides a more detailed and accurate description of the margin requirements applicable to market-makers. Accordingly, the CBOE proposes to delete paragraph (A) from Exchange Rule 12.3(b)(2), which provides that an account used to effect transactions in securities for which the member acts as a market maker or specialist may be carried on a mutually satisfactory margin basis, and replace it with the current provisions of Exchange Rule 30.41. Specifically, the Exchange proposes to move the provisions of Exchange Rule 30.41 to Exchange Rule 12.3(b)(2) (A) through (D). In addition, new paragraph (A) will be modified by deleting from the list of positions that

may be carried on a mutually satisfactory basis "securities convertible into those in which the member makes a market." Finally, the CBOE proposes to add to paragraph (A): (i) Language requiring that securities converted into permitted offset transactions be "immediately and directly" convertible; and (ii) a reference to paragraph "(c)(2)(vi)" of Rule 15c3–1 under the Act, which was omitted inadvertently when the CBOE's rule was adopted.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is intended to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 30, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–21444 Filed 9–6–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

September 3, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Damon Corporation
Common Stock, $.01 Par Value (File No. 7–7205)

Foxmeyer Corporation
Common Stock, $.01 Par Value (File No. 7–7206)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 25, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the informtion available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–21517 Filed 9–6–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29632; File No. SR–NASD–91–37]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc., Amending Schedule G to the By-Laws To Require Transaction Reporting for Exchange-Listed Securities Until 5:15 p.m. and Use of a Special Indicator for Certain Pricing Formula Trades

August 30, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 2, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Schedule G to the By-laws to require members to continue real-time trade reporting of transactions in exchange-listed securities until 5:15 p.m. and to use a special indicator to denote transactions priced on an average-weighting or other special pricing formula.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Current trade reporting obligations for listed securities in Schedule G to the NASD By-Laws require members to report transactions within 90 seconds after execution from 9:30 a.m. to 430 p.m. Eastern Time. Any trade report made more than 90 seconds after execution is required to be designated as late through use of the ".SLD" identifier. The commencement of the New York Stock Exchange's after-hours sessions in June, 1991 prompted the NASD to permit voluntary 90-second reporting by members until 5:15 p.m., to coincide with the extended hours of the Consolidated Tape Association ("CTA"). The NASD is now proposing to extend the reporting hours specified in Schedule G for listed securities until 5:15 p.m. so that 90-second reporting will be mandatory for all reporting members. This will enable the automated capture and dissemination of transactions occurring between 4 p.m. and 5:15 p.m., enhancing transparency to transactions and thereby permit investors and market professionals to follow after-hours trading activity in Nasdaq securities. In addition, the amendments will assure integration of this information into NASD surveillance systems.

In addition, confusion has arisen recently regarding a limited number of agency cross trades executed after 4 p.m. that have been reported at a price based on an average-weighting or other formula rather than a current negotiated price. An example of such a transaction would be a trade negotiated during the trading day to be executed after 4 p.m. at a price equal to the average of weighted prices of transactions taking place during the trading day. Certain institutions find such a trade attractive because it ensures that they will not purchase at the high for the day or sell at the low. Trade reports such as these, although timely made, may not relate to the closing price on the primary exchanges and carry no identifier describing their specialized nature. In order to alleviate confusion with regard to these trade reports, the NASD requested members to mark all such trades executed after 4 p.m. as .SLD pending consideration and approval of a permanent indicator by the CTA denoting the specialized sale condition (e.g., .SLD, G and H) and implementation of applicable amendments to Schedule G to codify the new requirement.[1]

While there are various specialized sale condition indicators employed in the reporting of consolidated transaction data to vendors, none accurately describe average-weighting trades. Accordingly, a new indicator may need to be approved by the CTA to cover these types of trades that are presently unique (for automated reporting purposes) to the Third Market. The NASD will work with CTA participants to develop an appropriate indicator for use in connection with these specialized trades and undertake the technical enhancements necessary to implement a new indicator so that any investor confusion with respect to these agency cross trades will be obviated. Modifications to Schedule G are proposed to provide for the use of any new indicator. In the interim, the amendments would provide for the use of the .SLD late trade indicator to denote formula trades and to specify that these trades would be exempted from the normal interpretation that printing trades .SLD as a course of conduct would subject a firm to disciplinary action.

The NASA believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." In addition, the proposed rule change furthers the objective set forth in section 11A(a)(1)(C)(iii) of ensuring the "availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities." Reporting transactions in listed securities within 90 seconds after execution is required during normal market hours and the NASA believes that continuing real-time reporting until 5:15 p.m. is appropriate for regulatory purposes and to enhance public dissemination of transactions, and use of special indicators with specially priced trades obviates investor confusion with regard to those transactions.

[1] A series of indicators for special sale conditions are currently in use by CTA Participants. Either one of the existing indicators or a new indicator may be found appropriate for use in connection with these trades.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASA believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASA consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASA. All submissions should refer to the file number in the caption above and should be submitted by September 30, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-21446 Filed 9-6-91; 8:45 am]

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[Release No. 34-29642; International Series Release No. 312; File No. SR-NASD-91-47]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Temporary Approval to Proposed Rule Change Relating to the Quotation Linkage Between the NASD and the London Stock Exchange

August 30, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 30, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On October 2, 1987, the Commission issued an order approving operation of a market information linkage between the NASD and the London Stock Exchange ("LSE") formerly the International Stock Exchange of the United States Kingdom and the Republic of Ireland, Ltd.) for a pilot term of two years.[1] This experimental linkage is designed to provide an interchange of quotation information ("linkage information") on about 740 securities ("linkage securities"); of that total, each marketplace has designated approximately half as its "pilot group" of linkage securities. NASD and LSE members that function as market makers on one or more of a subset of linkage that are quoted in both the NASDAQ and LSE dealer systems ("common issue") are authorized to access linkage information without paying a separate charge to receive it. Operation of the linkage in this fashion comports with the terms of the Commission's October 1987 Order. Most recently, the Commission authorized an extension of this pilot linkage through August 31, 1991, with the Commission's approval of File No. SR-NASD-91-8.[2]

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act) and Rule 19b-4 thereunder, the NASD submits this proposed rule change to obtain Commission approval for continued operation of the NASD/LSE pilot linkage through October 4, 1991.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments its received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to obtain an interim extension of the Commission's temporary approval of the NASD/LSE linkage through October 4, 1991. Absent an extension, authorization for the linkage will expire as of August 31, 1991.

During this proposed extension, the NASD and LSE will continue to discuss possible options regarding the Linkage's future structure and operational capabilities in relation to the needs of the international investment community. These discussions may lead to a substantive enhancement of the linkage, the pursuit of another joint initiative, or a decision to act independently in developing international systems that are responsive to the business needs of the sponsors constituencies. Any decision to enhance the linkage or to jointly develop an alternative system will entail another rule 19b-4 filing that will afford the Commission (and other interested parties) an opportunity to focus on relevant policy and regulatory issues. Meanwhile, continuation of the pilot linkage, as proposed would be supportive of the NASD's and LSE's efforts to define systems capable of accommodating cross-border trading more efficiently.

Another factor likely to affect the future prospects of the NASD/LSE linkage is the introduction of NASDAQ international Service ("SERVICE"), the subject of File No. SR-NASD-90-33.[3] Essentially, the SERVICE would extend the NASD's automated market-making systems to a European Session running from 3:30 to 9 a.m. (ET) on each U.S. business day. During this period, participating broker-dealers can utilize the SERVICE to quote markets in selected NASDAQ and exchange-listed securities by means of trading facilities located in the U.S. or U.K. Given the SERVICE's potential for supporting trading in U.S.-registered securities by institutional investors (both foreign and domestic) during U.K. business hours, the NASD and LSE may determine to substantially alter or terminate the pilot linkage altogether. However, until the SERVICE has been approved and the NASD has had an opportunity to evaluate it operation, the NASD believes that it is appropriate to maintain the NASD/LSE linkage.

The statutory bases for the NASD/LSE pilot linkage and the requested extension thereof, are contained in sections 11A(a)(1) (B) and (C), 15A(b)(6), and 17A(a)(1) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operation, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through the application of new data processing and communication techniques. Section 15A(b)(6) requires that the rules of the NASD be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediment to and to perfect the mechanism of a free and open market * * *." Section 17A(a)(1) sets for the the Congressional goal of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the requested extension of the linkage's pilot operation is fully consistent with the policy goals articulated in the foregoing statutory provisions and with the Commissions efforts to advance the process of internalization of securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

In its original release announcing interim approval of the NASD/LSE pilot linkage, the Commission referenced certain competitive concerns raised by

[1] Securities Exchange Act Release No. 24979 (October 2, 1987), 52 FR 37684 (October 8, 1987), (the "October 1987 Order").

[2] Securities Exchange Act Release No. 28918 (February 25, 1991), 56 FR 9034 (March 4, 1991).

[3] *See* Securities Exchange Act Release No. 28223 (July 18, 1990), 55 FR 30338 (July 25, 1990); and Release No. 38705 (December 17, 1990), 55 FR 52341 (December 21, 1990).

Instinet Corporation ("Instinet") through counsel.[4] In response, the NASD, after consultation with the LSE, made a good faith effort to address those concerns by narrowing the universe of firms and terminals permitted access to linkage information at no cost. Those changes were reflected in File No. SR-NASD-87-20, which the Commission approved by issuing the October 1987 Order. Further, in File No. SR-NASD-89-44 (which resulted in extension of the linkage's authorization until December 1, 1990), the NASD submitted statistical and cost information relative to its participation in the pilot project. In the event that the NASD and LSE determines to seek permanent approval of or materially enhance the linkage, every effort will be made to supply the Commission with the empirical data needed for its deliberations on the corresponding rule 19b-4 filing.

With respect to the instant filing, the NASD believes that the proposed extension of the linkage pilot through October 4, 1991 will not create any competitive burden vis-a-vis Instinet or any other vendor of securities market information. Moreover, Instinet and other interested parties will have ample opportunity to comment on any subsequent rule 19b-4 filing involving permanent approval or substantive enhancement of the linkage. Finally, during the requested extension, the sponsoring markets will not use linkage information for purposes of operating an intermarket, automated execution system.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD request that the Commission find good cause for approving this proposed rule change prior to the 30th day following publication of notice of the filing in the **Federal Register** and, in any event by August 30, 1991, the last business day before expiration of the linkage's present authorization. The NASD believes that the requested extension of the pilot period is fully consistent with the statutory provisions and policy goals referenced in section 3 of this rule 19b-4 filing. Moreover, the additional time will enable the sponsoring markets to consider various options and determine the future course of this experimental project. Those deliberations will focus on evaluating feasible enhancements to the linkage as well as alternative projects intended to advance the internalization of securities markets through more efficient computerized systems. Assuming Commission approval of File No. SR-NASD-91-47, experience gained from operation of the SERVICE may also affect discussion on the future of the NASD/linkage. Under these circumstances, it would be counterproductive to allow the NASD/LSE linkage to cease operation. Accordingly, the NASD believes that good cause exists to approve this proposed rule change on a date no later than August 30, 1991.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A(a)(1) (B) and (C), 15A(b)(6), 17A(a)(1) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing of notice of filing thereof. The Commission believes that accelerated approval will avoid an unnecessary interruption of the pilot linkage while allowing the NASD and LSE to consider feasible options for enhancing the linkage or defining other automation initiatives to facilitate the efficient handling of international order flow. Accordingly, the Commission believes the NASD/LSE linkage should not be terminated while these efforts are ongoing.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 30, 1991.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved thereby extending the NASD/LSE linkage until October 4, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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[4] See Securities Exchange Act Release No. 23158 (April 21, 1986), 51 FR 15939 (April 29, 1986). *See also* letter from Daniel T. Brooks, Counsel for Instinet, to John Wheeler, Secretary, Securities and Exchange Commission, dated April 16, 1986.

[Release No. 34-29631; File No. SR-PSE-91-21]

Self-Regulatory Organizations; the Pacific Stock Exchange; Order Granting Partial Approval of Proposed Rule Change Relating to the Extension of PSE's Trading Hours

August 30, 1991.

On June 5, 1991, the Pacific Stock Exchange ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to extend the hours of the PSE's auction market trading session for an additional twenty minutes to 1:50 p.m. (PT). The PSE also proposed to amend several rules of the Exchange's Board of Governors in order to allow the Exchange to provide primary market protection to orders that have been entered with the PSE but are designated to receive the execution price that will be established in the primary market's after-hours session; and to allow the entry of a new type of order, one-sided ("OS") closing price orders.[3] This order grants approval to a portion of the filing

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1990).

[3] The portion of the proposed rule change proposing to allow the Exchange to provide primary market protection to orders that have been entered with the PSE but are designated to receive the execution price that will be established in the primary market's after-hours session was approved by the Commission on an accelerated basis for a temporary period ending on May 24, 1993. See Securities Exchange Act Release No. 29305 (June 13, 1991), 56 FR 28208. In addition, the portion of the proposed rule change dealing with the creation and trading on the Exchange of OS orders is currently under review by the Commission.

The proposed rule change was published for comment in Securities Exchange Act Release No. 29305 (June 13, 1991), 56 FR 28208 (June 19, 1991). No comments were received regarding the proposal.

The Commission is approving today the portion of the PSE's proposed rule change that would extend the Exchange's current trading hours an additional twenty minutes. Thus, the hours of the PSE's auction trading market would be extended from the current hours of 6:30 a.m. to 1:30 p.m. (PT) to the new hours of 6:30 a.m. to 1:50 p.m. (PT).[4]

The PSE last changed its trading hours in 1985 when it moved the opening of its auction market trading session from 7 a.m. to 6:30 a.m. (PT).[5] In 1981, the PSE reduced its trading day by one hour by changing its trading hours from 7 a.m. to 2:30 p.m. (PT) to 7 a.m. to 1:30 p.m. (PT).[6]

Under the PSE's proposal to extend its trading hours to 1:50 p.m. (PT), the structure of the Exchange's after-hours (post 1 p.m.) auction market will not change. The only change would be to the hours of operation of the Exchange's after-hours auction market trading session. Thus, the same types of orders that are eligible for entry and execution during the PSE's current post-1 p.m. trading session will continue to be entered and executed. As before, regular market and limit orders will be eligible for entry and execution after 1 p.m. (PT). GTC ("good 'til cancelled") orders that are designated as eligible for the PSE's extended auction market session will migrate to this session. In addition, orders designated "GTX" ("good, 'til cancelled orders that are executable in the after hours session") will be allowed to migrate to the PSE's post-1 p.m. (PT) trading session and, if eligible, to be executed in either the 1 to 1:50 p.m. (PT) auction market session or in the primary market price protection session.[7]

In addition, any transactions executed during the PSE's last twenty minutes of trading would be reported to the Consolidated Tape System in the same manner as trades are currently reported during the PSE's existing 1 to 1:30 p.m. auction market trading period.

The Commission finds that the portion of the proposed rule change extending the PSE's auction market trading session to 1:50 p.m. (PT) is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act.[8] The Commission believes that this aspect of the PSE proposal is consistent with section 6(b)(5) of the Act in that it is reasonably designed to promote just and equitable principles of trade, perfect the mechanism of a free and open national market system, and, in general, protect investors and the public interest.

The Commission believes that, absent any regulatory concerns, the decision to change the Exchange's trading hours is a matter that falls within the business discretion of the PSE. In the instant case, the Commission has not received any comment letters from the public or PSE members raising any regulatory issues in connection with the extension of the PSE auction market hours to 1:50 p.m. (PT). The Commission notes, however, that during the proposed extension of trading hours, from 1:30 to 1:50 p.m. (PT), no other national securities exchange is operating an auction market. Although the NYSE is operating its Off-Hours Trading ("OHT") facility and the Amex is operating its after-hours trading session during this time period, these sessions are limited to accepting single stock orders priced at either the NYSE or the Amex closing price, respectively, or effecting portfolio trades.[9] Because the PSE's post-1 p.m. (PT) trading session will not overlap the 2 p.m. (PT) executions in Crossing Session I of the NYSE's OHT facility or in the Amex's after-hours trading facility, the proposal being approved today does not raise new market structure issues.

The Commission does not believe that an extension of the PSE's auction market trading hours to 1:50 p.m. will have an adverse effect on the maintenance of fair and orderly markets or disadvantage public customer orders. In this regard, the Commission notes that the PSE's auction market is already open for an additional half-hour after the close of the auction market on the other U.S. securities exchanges: From 1 p.m. to 1:30 p.m. (PT). The portion of the PSE proposal being approved today, which merely extends the PSE's after-hours auction market trading session for 20 minutes, should not affect the PSE's ability to provide fair and orderly markets or provide for the efficient exeuction of customers orders.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[10] that the portion of the proposed rule change extending the PSE's auction market trading hours to 1:50 p.m. (PT) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[4] PSE Rule 4.2 states that the opening and closing hours of the Exchange's trading sessions shall be established by the PSE's Board of Governors. Therefore, the instant proposal to change the closing time of the auction trading session will not require an amendment to the text of the PSE rules.

[5] See securities Exchange Act Release No. 22474 (September 27, 1985), 50 FR 41280 (approving, *inter alia*, File No. SR-PSE-85-23). The PSE's decision to open one-half hour earlier paralleled a move by the New York ("NYSE"), American ("Amex"), Philadelphia ("Phlx"), Boston ("BSE"), Midwest ("MSE"), and Cincinnati Stock Exchanges, as well as the Chicago Board Options Exchanged and the National Association of Securities Dealers, Inc., to also change their trading hours to open one-half hour earlier. See *id.* and Securities Exchange Act Release No. 22473 (September 27, 1985), 50 FR 41283.

[6] See Securities Exchange Act Release No. 18103 (September 18, 1981), 46 FR 47346. At that time, the PSE made a business decision that there was insufficient trading volume to economically justify the Exchange's last hour of trading. The Exchange did believe, however, that there was strong interest in trading on the Exchange in the period between 1 p.m. and 1:30 p.m. (PT). *Id.*

[7] On May 20, 1991, the Commission approved a proposal by the NYSE to extend its trading hours to establish two trading sessions: Crossing Session I, which permits the execution of single-stock single-sided closing-price orders, and crosses of single-stock closing-price buy and sell orders; and Crossing Session II, which allows the execution of crosses of multiple-stock aggregate-price buy and sell orders. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (approving Files No. SR-NYSE-90-52 and NYSE-90-53). The NYSE proposal introduced a new order type, a GTX order, which it defined as a GTC order executable through Crossing Session I of its Off-Hours Trading ("OHT") facility. Subsequent to Commission approval of the NYSE's OHT proposal, several of the regional stock exchanges amended their rules to require their specialists to provide primary market protection to GTX orders, which are limit orders that are designated as executiable after the close of the regular trading session, based on volume that prints in the primary market's after-hours session (see Securities Exchange Act Release Nos. 29305 (June 13, 1991), 56 FR 28208 (granting partial temporary accelerated approval to File No. PSE-91-21); 29301 (June 13, 1991), 56 FR 28182 (granting temporary accelerated approval to File No. BSE-91-4); 29297 (June 13, 1991), 56 FR 28191 (granting temporary accelerated approval to File No. MSE-91-11); and 29300 (June 13, 1991), 56 FR 28212 (granting temporary accelerated approval to File No. Phlx-91-26).

[8] 15 U.S.C. 78f (1988).

[9] See note 7, *supra*.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30-3(A)(12) (1990).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange; Incorporated

September 3, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for

unlisted trading privileges in the following security:

Foxmeyer Corporation
Common Stock, $0.01 Par Value (File No. 7-7207)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 25, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-21518 Filed 9-6-91; 8:45 am]

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[Release No. 34-29641; File No. SR-OCC-91-13]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to Revisions to Standard Form of Letter of Credit

August 30, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 16, 1991, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On August 21, 1991, OCC filed Amendment Number One to the proposed rule change, and on August 30, 1991, OCC filed Amendment Number Two to the proposed rule change.[1] This order grants accelerated approval on a temporary basis through February 28, 1992.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies certain terms of OCC's standard form of letter of credit. In general, the proposed rule change would require that letters of credit deposited by Clearing Members as margin with OCC be irrevocable and, unless otherwise permitted by OCC, expire on a quarterly basis. In addition, the proposed rule change would clarify that OCC may draw upon a letter of credit whether or not the Clearing Member that deposited such letter of credit has defaulted on any obligation to OCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC proposes to amend in a number of respects its rules governing the terms of letters of credit deposited as margin by Clearing Members in a number of respects. First, OCC's rules currently provide that the issuer of a letter of credit must pay OCC immediately upon demand.[2] However, under the Uniform Commercial Code as enacted in most states, the issuer of a letter of credit, except as otherwise agreed, may defer honor of such letter of credit until the close of the third business day after demand for payment is made.[3] The Uniform Customs and Practice for Documentary Credits, 1983 Revision, International Chamber of Commerce publication 400 ("Uniform Customs") provides that, unless otherwise expressly agreed, a "bank shall have a reasonable time" in which to determine whether the drawing documents are in order. In order to avoid any ambiguity as to the latest time for payment in the case of letters of credit incorporating the Uniform Customs, OCC intends to require that letters of credit state expressly that payment must be made prior to the close of business on the third banking day following demand.

Second, OCC's rules currently permit the issuer of a letter of credit to revoke the letter of credit upon two business days' written notice.[4] OCC believes that the issuer of a letter of credit is more likely to exercise its revocation rights at a time when the Clearing Member for whom such letter of credit is issued is experiencing financial difficulty. Accordingly, OCC believes that the two-day notice period imposes time constraints that may limit OCC's flexibility in resolving such difficulties. As a result, OCC proposes to amend its rules to eliminate the issuer's right to revoke the letter of credit.[5]

Third, OCC's rules currently provide that letters of credit shall expire on an annual basis.[6] However, the financial condition of a Clearing Member may change significantly within a shorter period of time. Thus, OCC believes that it would be preferable to structure its letter of credit program in a manner that permits an issuer to make more frequent credit judgments about the Clearing Member for whom it issues a letter of credit. Accordingly, unless otherwise permitted by OCC, OCC's proposal requires letters of credit deposited as margin to expire on a quarterly basis rather than annually.

Finally, OCC proposes to add language to its rules to make explicit OCC's authority to draw upon a letter of credit at any time OCC determines that such draw is advisable to protect OCC, other Clearing Members, or the general public.[7] Such draw may be made

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[1] Amendment Number One moved from Interpretations and Policies into the Rule itself the proposed language clarifying OCC's authority to draw down a letter of credit under the proposal even if a Clearing Member is neither insolvent nor in default. Amendment Number Two revised the proposal to authorize OCC to waive, on a temporary basis, any of the letter of credit standards specified in OCC Rule 604(c). Amendment Number Two also established a six month sunset for the effectiveness of the proposal.

[2] OCC Rule 604(c).

[3] *See, e.g.*, 26 Ill. Rev. Stat. section 5-112 (1990).

[4] OCC Rule 604(c).

[5] Although OCC's proposal would require a letter of credit deposited on behalf of a Clearing Member to be irrevocable, OCC may, of course, consent to the withdrawal of such letter of credit by a Clearing Member if such Clearing Member deposits other forms of margin with OCC or the letter of credit is otherwise no longer needed to satisfy the Clearing Member's margin requirement.

[6] OCC Rule 604(c).

[7] OCC Rule 604(c).

whether or not the Clearing Member that deposited the letter of credit has been suspended or is in default with respect to any obligation to OCC. Any funds so drawn will be treated as cash margin. This authority permits OCC, in effect, to increase the liquidity of its margin deposits by substituting cash collateral for a Clearing Member's letter of credit. In doing so, OCC also would eliminate its bank credit risk. OCC anticipates that it would use this authority very rarely and only under unusual circumstances.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act. Specifically, OCC believes the proposed rule change promotes the protection of investors by enhancing OCC's ability to safeguard the securities and funds in its protection or subject to its control.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden upon competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were not and are not intended to be solicited with respect to the proposed rule change, and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

OCC requests the Commission to find good cause for approving the proposed rule change on an accelerated basis prior to the thirtieth day after the date of publication of notice of the filing. Such accelerated approval would permit OCC to require that new or renewed letters of credit deposited by Clearing Members prior to the former annual September 1 letter of credit expiration date conform to the proposed rule change. As a result, Clearing Members depositing new or renewed letters of credit on or about September 1, 1991, will avoid the need to duplicate the effort and expense involved in providing two letters of credit (*i.e.*, one conforming to the prior standards and one conforming to the revised standards).

The Commission finds good cause for granting accelerated approval of the proposed rule change prior to the thirtieth day after the publication of notice of filing. Accelerated approval will permit OCC to implement these new standards prior to the expiration and renewal on September 1, 1991, of letters of credit deposited under the prior standards. In addition, temporary approval through February 28, 1992 will permit OCC, the Commission, and other interested parties to assess prior to permanent Commission approval of such standards any effects these revised standards have on letter of credit issuance and on margin deposits at OCC.

In the interim, however, the revised standards should make such letters of credit more liquid instruments and, consequently, should permit OCC to rely more safely upon letters of credit as deposited margin. Because letter of credit issuers will have to reexamine Clearing Members' financial conditions every three months rather than annually as under the prior standards, the financial condition of those Clearing Members electing to deposit letters of credit will be assessed more frequently, and therefore, any adverse developments should be discovered sooner. In addition, since the letters of credit will be irrevocable, issuers of letters of credit will no longer be able to revoke letters of credit at times when the Clearing Members most need credit facilities (*i.e.*, when a Clearing Member is experiencing financial difficulties or during times of market volatility). Finally, the proposed authority to waive specific letter of credit standards will permit OCC to react to exigencies that may arise in implementing the proposal. Thus, the proposed rule change conforms to section 17A(b)(3)(F) of the Act by promoting the safeguarding of securities and funds which are in the custody or control of OCC.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File Number SR-OCC-91-13 and should be submitted by September 30, 1991.

V. Conclusion

On the basis of the foregoing, the Commission finds that OCC's proposed rule change is consistent with the Act and, in particular, with section 17A of the Act.

It Is Therefore Ordered, Under section 19(b)(2) of the Act, that the proposal (File No. SR-OCC-91-13) be, and hereby is, approved on a temporary basis through February 28, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-21449 Filed 9-6-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25367]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 4, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 23, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Connecticut Light and Power Company (70-7885) EUA Power Corporation

The Connecticut Light and Power Company ("CL&P"), P.O. Box 270, Hartford, Connecticut 06037, an electric public-utility subsidiary company of Northeast Utilities, a registered holding company, and EUA Power Corporation ("EUA Power"), 40 Stark Street, P.O. Box 326, Manchester, New Hampshire 03105, an electric public-utility subsidiary company of Eastern Utilities Associates ("EUA"), a registered holding company (CL&P and EUA Power collectively, "Applicants"), have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(d) of the Act and rules 44 and 50(a)(5) thereunder.

The proposed transactions relate to the financing by EUA Power, a debtor in possession under chapter 11 of the Bankruptcy Code, 11 U.S.C., for certain expenses, including its share of the costs relating to the operation of the Seabrook Nuclear Power Plant ("Seabrook"). EUA Power owns a 12.1324 joint interest in Seabrook, a nuclear plant located in Seabrook, New Hampshire.

EUA Power has entered into a Stipulation and Consent Order ("Stipulation") with CL&P, United Illuminating Company ("United"), an exempt public utility holding company, and the Official Committee of Bondholders representing the holders of EUA Power's outstanding Series B Secured Notes and Series C Secured Notes in the bankruptcy proceeding. The Stipulation was approved by the United States Bankruptcy Court, District of New Hampshire on August 29, 1991.

Under the terms of the Stipulation, CL&P, United and, subject to further Commission authorization, any additional joint owners of Seabrook that may elect to participate ("Participating Joint Owners"), will make monthly advances ("Advances") to the disbursing agent for Seabrook ("Disbursing Agent") in an aggregate amount not to exceed $15 million outstanding at any one time ("Commitment"). The Advances will be used to pay EUA Power's share of Seabrook expenses, and certain other related expenses, as needed to the extent not covered by EUA Power's revenues from energy or capacity sales, and to protect the Participating Joint Owners' investment in Seabrook by insuring uninterrupted operation.

As the two Participating Joint Owners, United and CL&P will have a 100% combined percentage of participation, and their ratable shares of the aggregate Commitment and rights and obligations under the Stipulation will be 60% and 40%, respectively. The obligations of the Participating Joint Owners under the Stipulation are several and not joint or joint and several, and will not exceed such Joint Owner's ratable share of the aggregate Commitment.

Thus, the Applicants request authorization for CL&P, pursuant to the Stipulation, to make monthly Advances as a Participating Joint Owner in an aggregate amount not to exceed $6 million outstanding at any one time. Additionally, authorization is sought for EUA Power to be the beneficiary of such monthly Advances by United and CL&P in an aggregate amount not to exceed $15 million outstanding at any one time.

By letter agreement between United and CL&P, which will supplement and clarify the Stipulation, United will agree, subject to certain conditions, to make Advances under the Stipulation of up to $9 million, pending Commission authorization for CL&P's payments under the Stipulation, as if United's percentage of participation was 100%. CL&P will agree to authorize the Disbursing Agent to apply CL&P's Advances made after Commission authorization is granted to United's Joint Owner Account in an amount sufficient to place United in the position it would have been had CL&P participated in all Advances previously made under the Stipulation.

EUA Power will repay all Advances, interest, fees, expenses and other obligations no later than 360 days after the Bankruptcy Court's approval of the Stipulation (unless such date is extended upon the written consent of all Participating Joint Owners) or earlier upon the occurrence of certain events described in the Stipulation. All Advances will bear interest at a rate per annum equal to the sum on the base rate of the First National Bank of Boston, as in effect from time to time, plus 7 percent per annum.

Except as otherwise provided in the Stipulation, and subject to certain conditions regarding the nuclear fuel, the Applicants propose that EUA Power's obligations to reimburse the Advances and to pay interest, costs and expenses will be secured by a lien ("Lien") on all property of EUA Power's bankruptcy estate. The Lien will rank prior to all other liens and, except as otherwise provided in the Stipulation, will be given payment priority over any and all other claims, including administrative expenses. The Applicants request authorization to engage in the proposed transactions through March 1, 1993.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-21519 Filed 9-6-91; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting from 10:15 a.m. to 12 noon on Thursday, September 26, 1991, at the Rio Salado Small Business Development Center, 301 West Roosevelt, suite D, Phoenix Arizona, to discuss such matters as may be presented by Advisory Board Members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Hardy Patten, U.S. Small Business Administration, 409 3rd Street, SW., 6th Floor, Washington, DC 20416, telephone (202) 205-6766.

Dated: August 30, 1991.

Valarie Tolson,

Acting Director, Office of Advisory Councils.

[FR Doc. 91-21536 Filed 9-6-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1471]

Advisory Committee to the United States Section, International North Pacific Fisheries Commission; Partially Closed Meeting

The Advisory Committee to the United States Section of the International North Pacific Fisheries Commission (INPFC) will meet on Thursday, September 26, 1991, at the Anchorage Hilton Hotel in the second floor meeting area. This session will discuss the Protocol to the International Convention for the High Seas Fisheries of the North Pacific Ocean, surveillance of foreign fishing fleets, the progress of fisheries research, the Alaska salmon fisheries, and fishery developments as they affect the International North Pacific Fisheries Commission. The session will be open to the public from 7 p.m. to 8 p.m.

The Advisory Committee will also meet from 8:15 p.m. to 9:15 p.m. This session will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States negotiating position to be

taken at the Annual Meeting of the International North Pacific Fisheries Commission to be held in Tokyo, Japan, November 5–9, 1991. The members of the Advisory Committee will examine various options for the negotiating position at the Special Meeting, and these considerations must necessarily involve review of classified matters. Accordingly, the determination has been made to close this 8:15 p.m. to 9:15 p.m. session pursuant to section 19(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 19(d) and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. George Herrfurth, Senior Pacific Fisheries Officer, Office of Fisheries Affairs (OES/OFA), room 5806, U.S. Department of State, Washington, DC 20520–7818. Mr. Herrfurth can be reached by telephone on (202) 647–2009 or by FAX on (202) 647–1106.

Dated: August 27, 1991.

David A. Colson,

Deputy Assistant Secretary, Oceans and Fisheries Affairs.

[FR Doc. 91–21429 Filed 9–6–91; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1473]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 2 p.m. on Thursday, October 17, 1991, in room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. The purpose of the meeting is to finalize preparations for the 17th Session of Assembly, and the 16th Extraordinary and 67th Sessions of Council of the International Maritime Organization (IMO) which is scheduled for October 15–November 8, 1991, at the IMO Headquarters in London. IMO documents and draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

—Reports of the IMO Committees.
—Reports on diplomatic conferences.
—Report on resolution A.641(16).
—Work program and budget for 1992–1993.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Gene F. Hammel, U.S. Coast Guard (G–CI), room 2114, 2100 Second Street SW., Washington, DC 20593 or by calling (202) 267–2280.

Dated: August 27, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91–21430 Filed 9–6–91; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1472]

Shipping Coordinating Committee; Meeting

The U.S. Safety of Life at Sea Working Groups on Design & Equipment and Fire Protection will jointly conduct an open meeting on October 1, 1991 at 9 a.m. in room 6319 at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593. The purpose of the meeting will be to discuss the revision to the International Maritime Organization (IMO) Code of Safety for Dynamically Supported Craft (DSC), and the U.S. position relative to combustible construction of such craft. U.S. policy for domestic certification of DSC of combustible construction will also be discussed.

Members of the public may attend up to the seating capacity of the room. For further information regarding this meeting, please contact Mr. Ash Chatterjee at (202) 267–2997.

Dated: August 28, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91–21431 Filed 9–6–91; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements: Submittals to OMB on August 28, 1991

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on August 28, 1991, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson or Susan Pickrel, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone, (202) 366–4735, or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395–7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "**FOR FURTHER INFORMATION CONTACT**" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "**FOR FURTHER INFORMATION CONTACT**" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on August 28, 1991.

DOT No: 3535
OMB No: New
Administration: Urban Mass Transportation Administration
Title: Americans With Disabilities Act (ADA) Paperwork Requirements
Need for Information: To determine implementation and regulatory compliance with ADA.
Proposed Use of Information: To monitor performance through triennial reviews and complaint investigations.
Frequency: Annually for 900 of the participants and one time for the 31 light, rapid and commuter rail systems.
Burden Estimate: 183,720 hours

Respondents: UMTA recipients and other operators primarily engaged in transporting people.
Form(s): None
Average Burden Hours Per Response: 197 hours

DOT No: 3536
OMB No: 2115–0565
Administration: U.S. Coast Guard
Title: Hopper Dredge Working Freeboard; Load Line and Stability Requirements
Need for Information: This information collection is needed by the U.S. Coast Guard to ensure that masters operating vessels are in compliance with statutory mandates and regulations.
Proposed Use of Information: This information collection will be used by the U.S. Coast Guard to ensure that owners or operators of self-propelled hopper dredges meet certain structural stability standards at the proposed working freeboard. It will also ensure that masters of vessels are provided stability and loading information in order to allow them to operate their vessels in a safe manner.
Frequency: On occasion
Burden Estimate: 51 hours
Respondents: Owners, Operators or Agents of Self-propelled hopper dredges
Form(s): N/A
Average Burden Hours Per Response: 50 hours

DOT No: 3537
OMB No: 2115–0545
Administration: U.S. Coast Guard
Title: Financial Responsibility For Water Pollution Vessels
Need for Information: This information collection is needed by the U.S. Coast Guard to ensure that owners of vessels over 300 gross tons, using U.S. waters, comply with the Federal Water Pollution Control Act and CERCLA.
Proposed Use of Information: This information collection will be used by the U.S. Coast Guard to administer the provisions of 33 USC 2701 and 42 USC 9601. The purpose of this information is to ensure that persons directly subject to these rules are in compliance with mandatory provisions.
Frequency: On occasion
Burden Estimate: 2,162 hours
Respondents: Owners of vessels over 300 gross tons
Form(s): CG–5358–8
Average Burden Hours Per Response: 30 minutes for reporting and 10 minutes for recordkeeping

DOT No: 3538
OMB No: 2137–0578
Administration: Research and Special Programs Administration
Title: Reporting Safety-Related Conditions on Gas, Hazardous Liquid, and Carbon Pipelines and Liquefied Natural Gas Facilities.
Need for Information: The information is needed to assist Federal pipeline safety inspectors of RSPA and State pipeline safety inspectors of States participating in the pipeline safety program.
Proposed Use of Information: To monitor the corrective actions proposed by operators in order to prevent the occurrence of an incident or accident.
Frequency: The frequency of the collection of information is on an event basis.
Burden Estimate: 1,020 hours
Respondents: 170 Gas, Hazardous Liquid, Carbon Dioxide, and Liquefied Natural Gas Operators
Form(s): None
Average Burden Hours Per Response: 6 hours

DOT No.: 3539
OMB No.: 2137–0049
Administration: Research and Special Programs Administration
Title: Recordkeeping Requirements for Gas Pipeline Operators
Need for Information: The recordkeeping is necessary to ascertain compliance with regulations.
Proposed Use of Information: The information is used to evaluate the compliance of operators of natural gas pipelines with the pipeline safety requirements of CFR Part 192.
Frequency: Recordkeeping is performed on the occasions that require these records.
Burden Estimate: 1,063,517 hours
Respondents: 2,300 Natural Gas Pipeline Operators
Form(s): None
Average Burden Hours Per Response: 462 hours

DOT No.: 3540
OMB No.: 2115–0518
Administration: U.S. Coast Guard
Title: Requirements for the Installation and Use of Oil Discharge Monitoring Equipment on Tank Vessels and For the Retention of Discharge Data
Need for Information: This information collection is needed by the U.S. Coast Guard to ensure that regulations implementing the provisions of the International Convention for the Prevention of Pollution of Ships are met. These regulations require the installation of cargo monitors and control systems on tank vessels that are 150 gross tons or more. Foreign tankers entering U.S. waters must have an International Oil Pollution Prevention Certificate or equivalent. This certificate provides information that the tankers are in compliance with the design and equipment standards.
Proposed Use of Information: This information collection will be used by the U.S. Coast Guard to assure that vessels have met the applicable design and equipment standards as promulgated by the regulations.
Frequency: On occasion
Burden Estimate: 963 hours
Respondents: Vessel owners
Form(s): N/A
Average Burden Hours Per Respondent: 15 minutes

DOT No.: 3541
OMB No.: 2120–0033
Administration: Federal Aviation Administration
Title: Representatives of the Administrator
Need for Information: To select properly qualified private persons to be representatives of the Administrator for examining, testing and certifying airmen for the purpose of issuing them airmen certificates.
Proposed Use of Information: The information collected is used to determine eligibility of the representatives.
Frequency: On occasion
Estimated Number of Respondents: Individuals
Total Estimated Burden: 3,937 hours
Form(s): FAA forms 8110–14, 1520–2, 8710–6
Average Burden Hours Per Response: FAA Form 8110–14; 1 hour; FAA Form 8520–2: 15 minutes; and FAA Form 8710–6: 30 minutes

DOT No.: 3542
OMB No.: New
Administration: National Highway Traffic Safety Administration
Title: Federal Motor Vehicle Safety Standards, Lamps, Reflective Devices and Associated Equipment, Replaceable Light Source Dimensional Information (49 CFR 571.108 and 564)
Need for Information: To provide an alternative to rulemaking for standardizing headlamp light source dimensions and performance.
Proposed Use of Information: Information will be used by headlamp light source manufacturers for determining the interchangeability aspects of headlamp light sources for manufacturing purposes.
Frequency: On occasion
Burden Estimate: 24 hours
Respondents: Businesses
Form(s): None

Average Burden Hours Per Respondent: 12 hours
DOT No.: 3543
OMB No.: 2127–0008
Administration: National Highway Traffic Safety Administration
Title: Consumer Complaint/Recall Audit Information
Need for Information: To provide information to motorists on the effectiveness of a particular recall, and to identify significant vehicle/equipment problems.
Proposed Use of Information: Solicits information from owners of all types of motor vehicles and motor vehicle/equipment that have been recalled by the manufacturers.
Frequency: On occasion
Burden Estimate: 36,380 hours
Respondents: Individuals
Form(s): HA–Form 350, 350B, 350C, 161 and Recall Letters
Average Burden Hours Per Respondent: 9 minutes

Issued in Washington, DC on August 28, 1991.

Cynthia C. Rand,
Director of Information Resource Management.

[FR Doc. 91–21441 Filed 9–6–91; 8:45 am]

BILLING CODE 4910–62–M

Aviation Proceedings; Agreements Filed During the Week Ended August 30, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47719.
Date filed: August 26, 1991.
Parties: Members of the International Air Transport Association.
Subject: Europe-Japan/Korea Resolutions: TC23 Reso/P 0462 dated July 30, 1991 R–1 To R–4. TC23 Reso/P 0463 dated July 30, 1991 R–5 To R–28.
Proposed Effective Date: October 1/November 1, 1991.

Docket Number: 47722.
Date filed: August 28, 1991.
Parties: Members of the International Air Transport Association.
Subject: Telex dated August 20, 1991. SNATC Mail Vote #90 (despecifying Fares from Algeria); R–1–Resolution No. 19; R–2 Resolution No. 22.
Proposed Effective Date: October 1, 1991.

Phyllis T. Kaylor,
Chief Documentary Services Divisions.

[FR Doc. 91–21443 Filed 9–6–91; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 30, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportations' Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number; 47718.
Date filed August 26, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope; September 23, 1991.
Description: Application of All Nippon Airways, Co., Ltd., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for an amendment to its foreign air carrier permit to engage in scheduled foreign air transportation of persons, property and mail as follows: Between the terminal point Nagoya, Japan and the terminal point Honolulu, Hawaii.

Docket Number: 47721.
Date filed: August 27, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: 24, 1991.
Description: Application of Panama Airlines, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations seeks a foreign air carrier permit to engage in non-scheduled and charter foreign air transportation of property and mail as follows: (a) From a point or points in Panama to Miami and return. (b) Such charter authority as may be permitted under part 212 of the Department's Economic Regulations.

Docket Number: 47724.
Date filed: August 30, 1991.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 27, 1991.
Description: Application of Atlantic Coast Airlines d/b/a United Express pursuant to section 401 (d)(1) of the Act and subpart Q of the Regulations, requests a certificate of public convenience and necessity to conduct scheduled interstate and overseas air transportation.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 91–21442 Filed 9–6–91; 8:45 am]

BILLING CODE 4910–62–M

National Highway Traffic Safety Administration

[Docket No. 91–42; Notice 1]

Receipt of Petition for Determination That Nonconforming 1988 BMW 730iA Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1988 BMW 730iA passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1988 BMW 730iA that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is October 9, 1991.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

"(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

G&K Automotive Conversion, Inc. of Anaheim, California (Registered Importer No. R-90-007) has petitioned NHTSA to determine whether 1988 BMW 730iA passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1988 BMW 735iA. G&K has submitted information indicating that Bayerische Motoren-Werke A.G., the company that manufactured the 1988 BMW 735iA, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner noted that the agency, on its own initiative, has already made a determination of substantial similarity covering 1988 Model 735iA vehicles that Bayerische Motoren-Werke A.G. did not certify and offer for sale in the United States (55 FR 47418). It contends that the 730iA is substantially similar and "appears to be structurally identical" to the 735iA, judging from the vehicle's wheelbase, other dimensions, and weight. In accounting for the differences between the two vehicles, the petitioner observed that Bayerische Motoren-Werke A.G. "generally designs only a few basic body versions * * * which it then offers with various engine and/or comfort options." The petitioner further surmised that the 730iA's absence from the United States market could be attributed to "saleability considerations or legislative restrictions such as the strict emission control requirements in the United States."

G&K submitted information with its petition intended to demonstrate that the 1988 model 730iA, as originally manufactured conforms to many Federal motor vehicle safety standards in the same manner as the 1988 model 735iA that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1988 model 730iA is identical to the certified 1988 model 735iA with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence * * *, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 113 Hood Latch Systems, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207 Seating Systems, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 216 Roof Crush Resistance, 219 Windshield Zone Intrusion, and 302 Flammability of Interior Materials.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies and bulbs; (b) installation of front and rear sidemarker lamps and reflex reflectors; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger's outside rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 116 *Brake Fluid:* Information molded into the brake fluid reservoir cap is incomplete and must be supplemented to comply with the standard.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative collection canister.

Additionally, the petitioner states that the bumpers on the 1988 model 730iA must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 9, 1991.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on August 29, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 91-21440 Filed 9-6-91; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 91-41; Notice 1]

Receipt of Petition for Determination That Nonconforming 1990 Mercedes-Benz 300SL-24 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of receipt of petition for determination that nonconforming 1990 Mercedes-Benz 300SL-24 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1990 Mercedes-Benz 300SL-24 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is October 9, 1991.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. § 1397(c)(2)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

"(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standard * * *."

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

G&K Automotive Conversion, Inc. of Anaheim, California (Registered Importer No. R-90-007) has petition NHTSA to determine whether 1990 Mercedes-Benz 300SL-24, Model ID 129.061 passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1990 Mercedes-Benz 300SL-24, Model ID 129.061 that Mercedes-Benz of North America offered for sale in the United States. This model was manufactured by Daimler-Benz A.G. and was certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner states that it has carefully compared the 300SL-24 with its U.S.-companion model, and found that they are substantially similar with respect to most applicable Federal motor vehicle safety standards. Moreover, the petitioner asserts that the 1990 model 300SL-24, as originally manufactured, conforms to many of the Federal motor vehicle safety standards in the same manner as its counterpart that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1990 model 300SL-24 is identical to its U.S.-companion model with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluids*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger's outside rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* Installation of a seat belt warning buzzer and replacement of the existing Type 1 rear seat belts with U.S. model seat belts equipped with retractors (vehicle is already equipped with air bags and Type 2 front seat belts that meet U.S. standards).

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporation emissions collection cannister.

Additionally, the petitioner states that the bumpers on the 1990 model 300SL-24 must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be

submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 9, 1990.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(II) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on August 30, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 91-21439 Filed 9-6-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 3, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revene Service

OMB Number: 1545-0805.

Form Number: IRS Form 5472.

Type of Review: Revision.

Title: Information Return of a 25% Foreign-Owned U.S. Corporation or Foreign Corporation Engaged in U.S. Trade or Business.

Description: Form 5472 is used by U.S. corporations that are 25% foreign owned and by foreign corporations that are engaged in a U.S. trade or business to report transactions between themselves and any related foreign party. IRS uses Form 5472 to determine if inventory or other costs deducted by the U.S. or foreign corporation are correct.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/Recordkeepers: 75,000.

Estimated Burden Hours Per Respondent/Recordkeeping

Recordkeeping—12 hours, 23 minutes.

Learning about the law or the form—1 hour, 41 minutes.

Preparing and sending the form to IRS—1 hour, 59 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1,279,500 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-21496 Filed 9-6-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 3, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

INTERNAL REVENUE SERVICE

OMB Number: New.

Form Number: IRS Form 8453-NR.

Type of Review: New collection.

Title: U.S. Nonresident Alien Income Tax Declaration for Magnetic Media Filing.

Description: This form will be used to secure taxpayer signatures and declarations in conjunction with the Magnetic Media Filing program. This form, together with the electronic transmission, will comprise the taxpayer's income tax return.

Respondents: Individuals or households.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent:

Recordkeeping, 0

Learning about the law or the form, 8 hours

Preparing the form, 28 hours

Copying, assembling, and sending the form to IRS, 20 hours

Frequency of Response: Annually.

Estimated Total Reporting Burden: 4,750 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer

[FR Doc. 91-21432 Filed 9-6-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Intradepartmental Computer Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of computer matching program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs proposes to conduct an internal computer matching program. The Veterans Benefits Administration and the Office of the Assistant Secretary for Finance and Information Resources Management are the components responsible for managing the systems of records that will be subject to the matching program. The purpose of the program is to identify and locate Department employees who owe delinquent debts to the Federal Government under certain programs administered by the Department of Veterans Affairs. Once identified and located, the debtors may become subject to involuntary offset of their pay under Public Law 97-365.

DATES: Written comments must be received on or before October 9, 1991. Comments will be available for public inspection until October 21, 1991.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding the proposal to conduct the matching program to the Secretary of Veterans

Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 at the above address, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except holidays, until October 21, 1991.

FOR FURTHER INFORMATION CONTACT: Daniel Osendorf, Director, Debt Management Staff (20A6), Department of Veterans Affairs, (202) 233-2853.

SUPPLEMENTARY INFORMATION: The Veterans Benefits Administration and the Office of the Assistant Secretary for Finance and Information Resources Management intend to conduct a computer matching program for the purpose stated below. This notice meets publication requirements under subsection (e)(12) of the Privacy Act of 1974 (5 U.S.C. 552a, as amended by Public Laws 100-503 and 101-508). Set forth below is a description of the matching program as required by the "Final Guidance Interpreting the Provisions of Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988", issued by the Office of Management and Budget and published at 54 FR 25818 (June 19, 1989).

Report of Computer Matching Program—Department of Veterans Affairs (internal department match of payroll records with debtor records).

A. Participating Agencies

The Veterans Benefits Administration of the Department of Veterans Affairs is the recipient component and will perform the computer match with records provided by the Office of the Assistant Secretary for Finance and Information Resources Management.

B. Purpose of the Match

This match will permit the Department of Veterans Affairs to identify and locate its own employees who owe delinquent debts to the Federal Government as the result of their participation in certain programs administered by the Department. Once identified and located, the debtors' pay may become subject to offset for collection of their debts under the provisions of the Debt Collection Act of 1982 when voluntary payments are not forthcoming.

C. Authority for Conducting the Matching Program

The authority for undertaking this match is found in 5 U.S.C. 5514 (Debt Collection Act of 1982).

D. Categories of Individuals Involved and Identification of Records to be Matched

1. *Finance and Planning System:* Personnel Accounting Integrated Data (PAID) Master Records in the Personnel and Accounting Pay System-VA, 27VA047, which appears at page 891 of the document entitled Privacy Act Issuances, 1989 Compilation, Volume II. This system contains records of approximately 200,000 active VA employees.

2. *Veterans Benefits Administration Systems:* (1) Compensation, Pension, Education and Rehabilitation Records-VA, 58VA21/22/28, which appears at page 918 of the document entitled Privacy Act Issuances, 1989 Compilation, Volume II, and has been amended at 55 FR 28508 (July 11, 1990), 55 FR 42540 (October 19, 1990) and 56 FR 15667 (April 17, 1991) and 58VA21/22 at 56 FR 16354 (April 22, 1991). (2) Loan Guaranty Home, Condominium, and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records, 55VA26, which appears at page 914 of the document entitled Privacy Act Issuances, 1989 Compilation, Volume II, and has been amended at 56 FR 2064 (January 18, 1991) and 56 FR 15666 (April 17, 1991). The debtor records actually used to perform the match are maintained in the Centralized Accounts Receivable System (CARS). CARS records, which number approximately 500,000, are a subset of those found in the Privacy Act system of records 58VA21/22/28. In some instances, data in an individual's record in the Privacy Act system of records 58VA21/22/28 include certain data extracted from the same individual's record.

E. Inclusive Dates of the Matching Program

The matching program is expected to begin on or about October 1, 1991, and continue in effect for 18 months. Matching activity will begin no sooner than 30 days after the publication of this notice or 30 days after a copy of the matching agreement has been provided to Congress and the Office of Management and Budget, whichever is later. The agreement governing the matching program and, thus, the matching program, may be renewed for an additional 12 months with the approval of the Data Integrity Board of the Department of Veterans Affairs. Such renewal must occur within three months prior to the expiration of the 18-month period set forth above and under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

Dated: August 28, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 91-21481 Filed 9-6-91; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 174
Monday, September 9, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR COMMISSION

Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, September 26, 1991.

The Commission was established pursuant to Public Law 99-647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7:00 P.M. at the Town Council Chambers, Lincoln Town Hall, 100 Old River Road, Lincoln, Rhode Island for the following reasons:

1. Swearing In of Commissioners;
2. Annual Report of the Commission;
3. Election of Officers;
4. Report and Proposal of the Executive Subcommittee on Budget and Administration;
5. Report on MA Bikeway Project; and
6. Public Comment Period

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 34, Uxbridge, MA 01569. Telephone: (508) 278-9400.

Further information concerning this meeting may be obtained from James Pepper, Executive Director of the Commission at the address below.

James Pepper,

Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 91-21697 Filed 9-5-91; 2:06 pm]

BILLING CODE 4310-70-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 6, 1991, from 3:00 p.m. until such time as the Board concluded its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD 703-833-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be closed to the public pursuant to exemptive provisions of the Government in the Sunshine Act. The matters to be considered at the meeting are:

***Closed Session**

New Business

- Government-Sponsored Enterprises—Agency Options.

*Session closed to the public—exempt pursuant to 5 U.S.C. § 552b(c)(9).

Dated: September 5, 1991.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-21712 Filed 9-5-91; 2:06 pm]

BILLING CODE 6705-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 12, 1991, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. Current Applicability of Outstanding FCA Board Policy Statements.

Closed Session*

A. New Business

1. Enforcement Actions.

Dated: September 5, 1991.

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 91-21713 Filed 9-5-91; 2:06 pm]

BILLING CODE 6705-01-M

FEDERAL ENERGY REGULATORY COMMISSION

Notice

September 4, 1991.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), U.S.C. 552B:

DATE AND TIME: September 11, 1991, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 943rd Meeting—September 11, 1991, Regular Meeting (10:00 a.m.)

CAH-1.

Project No. 2114-020, Public Utility District No. 2 of Grant County, Washington

CAH-2.

Project No. 2370-032, Pennsylvania Electric Company
CAH-3.
Project No. 1417-033, Central Nebraska Public Power and Irrigation District
CAH-4.
Project No. 10819-001, Idaho Water Resource Board
Project No. 10830-001, Nez Perce Tribe
Project No. 10832-001, Pacific Western, Inc.
CAH-5.
Omitted
CAH-6.
Project No. 5118-005, Glenn M. Phillips
CAH-7.
Project No. 3623-030, Youghiogheny Hydroelectric Authority
CAH-8. Omitted
CAH-9.
Project No. 137-018, Pacific Gas and Electric Company
Project No. 619-023, Pacific Gas and Electric Company and City of Santa Clara, California

Consent Agenda—Electric

CAE-1.
Docket No. ER91-480-001, Jersey Central Power & Light Company
CAE-2.
Docket No. ER91-457-001, Central Maine Power Company
CAE-3.
Docket No. ER91-364-001, Nantahala Power and Light Company
CAE-4.
Docket Nos. ER91-150-002 and EL91-29-001, Southern Company Services, Inc.
CAE-5.
Docket No. EL90-43-001, Oklahoma Municipal Power Authority v. Public Service Company of Oklahoma
CAE-6.
Docket Nos. QF87-237-004, 000, and 002, Midland Congeneration Venture Limited Partnership and CMS Midland, Inc.
CAE-7.
Docket No. ER90-159-002, South Carolina Electric & Gas Company
CAE-8.
Docket No. EF90-5171-000, United States Department of Energy—Western Area Power Administration (Salt Lake City Area Integrated Projects)
CAE-9.
Docket No. EF91-4011-000, United States Department of Energy—Southwestern Power Administration
CAE-10.
Omitted
CAE-11.
Docket Nos. ES91-41-000, ES91-45-000 and ES91-46-000, El Paso Electric Company
CAE-12.
Docket Nos. ER90-223-002 and 003, Texas Utilities Electric Company
CAE-13.
Docket Nos. ER90-540-000, EL90-49-000, EL90-51-000 and EL90-52-000, Virginia Electric and Power Company
CAE-14.
Docket Nos. ER89-678-000, EL90-16-000 and EL90-45-000, System Energy Resources, Inc. and Energy Services Inc.
CAE-15.
Docket No. EC91-2-000, Kansas Power and Light Company and Kansas Gas and Electric Company
CAE-16.
Docket No. EL90-10-000, Central Montana Electric Power Cooperative, Inc.
Docket No. ER91-351-000, Montana Power Company
CAE-17.
Omitted
CAE-18.
Docket No. ER90-355-000, Pacific Gas and Electric Company
Docket No. EL89-34-000, Northern California Power Agency v. Pacific Gas and Electric Company
CAE-19.
Docket No. EC91-18-000, Baltimore Refuse Energy Systems Company, Limited Partnership

Consent Agenda—Oil and Gas

CAG-1.
Docket No. RP91-209-000, Texas Eastern Transmission Corporation
CAG-2.
Omitted
CAG-3.
Docket Nos. TM91-9-22-000, 001 and TM91-7-22-001, CNG Transmission Corporation
CAG-4.
Omitted
CAG-5.
Docket No. TQ91-7-20-000, Algonquin Gas Transmission Company
CAG-6.
Docket No. RP91-72-004, Texas Eastern Transmission Corporation
CAG-7.
Docket No. RP89-185-006, Panhandle Eastern Pipe Line Company
CAG-8.
Docket No. RP91-196-000, Florida Gas Transmission Company
CAG-9.
Docket No. RP89-141-000, Sea Robin Pipeline Company
CAG-10.
Docket No. RP91-126-000, *et al.*, United Gas Pipe Line Company
CAG-11.
Docket No. PL91-2-001, Interstate Natural Gas Pipeline Rate Design
CAG-12.
Docket Nos. RP91-72-005, RP91-73-005, RP91-74-002 and RP91-75-005, Texas Eastern Transmission Corporation
CAG-13.
Docket Nos. RP89-35-012, RP89-36-010 and RP86-33-014, Midwestern Gas Transmission Company
CAG-14.
Docket No. RP91-177-002, Wyoming Interstate Company, Ltd.
CAG-15.
Docket Nos. RP87-30-038 (Phase II) and RP90-69-009, Colorado Interstate Gas Company
CAG-16.
Docket Nos. RP88-211-017, RP91-3-003, RP90-143-004, RP90-65-006, RP90-27-003, RP89-204-004, RP88-215-004, RP88-125-006, RP88-10-009, RP85-169-052, CP91-554-003, CP88-574-007, CP88-779-006, CP86-311-007, CP80-292-006, TA90-1-22-010, TA89-1-22-006, TA88-2-22-011 and TQ88-1-22-006, CNG Transmission Corporation
CAG-17.
Docket No. RP91-65-005, Arkla Energy Resources, a Division of Arkla, Inc.
CAG-18.
Docket No. RP87-7-000, Transcontinental Gas Pipe Line Corporation
CAG-19.
Docket No. RP91-167-002, Tennessee Gas Pipeline Company
CAG-20.
Docket No. RP91-166-002, Northwest Pipeline Corporation
CAG-21.
Docket No. RP91-163-001, Louisiana-Nevada Transit Company
CAG-22.
Docket Nos. RP91-151-001, 003, RP91-37-000, 001 and 005, Carnegie Natural Gas Company
CAG-23.
Docket No. RP91-132-001, Colorado Interstate Gas Company
CAG-24.
Docket Nos. RP91-119-001 and RP90-119-008, Texas Eastern Transmission Corporation
CAG-25.
Docket No. RP90-104-009, Texas Gas Transmission Corporation
CAG-26.
Docket No. TQ90-3-43-004, Williams Natural Gas Company
CAG-27.
Docket No. TM91-9-29-001, Transcontinental Gas Pipe Line Corporation
CAG-28.
Docket No. TM91-8-37-001, Northwest Pipeline Corporation
CAG-29.
Omitted
CAG-30.
Omitted
CAG-31.
Docket No. ST88-1-000, Arkansas Western Gas Company
CAG-32.
Docket No. RM87-34-060, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol
Docket Nos. TA91-1-21-001 and TM91-8-21-001, Columbia Gas Transmission Corporation
Docket No. RM85-1-183, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol
Docket No. CP87-115-000, Tennessee Gas Pipeline Company
CAG-33.
Omitted
CAG-34.
Docket No. PR91-16-000, Wintershall Pipeline Corporation
CAG-35.
Omitted
CAG-36.
Docket No. GP88-26-004, Northern Pump Company (Danner No. A-1 Well)
CAG-37.
Docket No. CP88-14-000, ANR Pipeline Company
CAG-38.

Docket No. CP89-2114-001, United Gas Pipe Line Company
CAG-39.
Docket No. CP91-534-001, Panhandle Eastern Pipe Line Company
CAG-40.
Docket No. CP88-833-001, Washington Natural Gas Company
Docket No. CP89-1525-002, Northwest Pipeline Corporation
CAG-41.
Docket No. CP89-629-004, Tennessee Gas Pipeline Company
CAG-42.
Omitted
CAG-43.
Docket No. CP91-2021-000, Questar Pipeline Company
CAG-44.
Docket No. CP91-2779-000, Tennessee Gas Pipeline Company
CAG-45.
Docket Nos. CP91-2727-000, CP91-2728-000 and CP91-2729-000, Algonquin Gas Transmission Company
CAG-46.
Docket No. CP91-2633-000, Colorado Interstate Gas Company
CAG-47.
Docket Nos. CP91-2552-000, CP91-2553-000, CP91-2554-000, CP91-2555-000 and CP91-2556-000, Panhandle Eastern Pipe Line Company
CAG-48.
Docket Nos. CP91-2539-000 and CP91-2542-000, Trunkline Gas Company
CAG-49.
Docket No. CP91-2488-000, Columbia Gulf Transmission Company
CAG-50.
Docket Nos. CP91-2477-000 and CP91-2478-000, Williston Basin Interstate Pipeline Company
CAG-51.
Docket No. CP91-2462-000, Northern Natural Gas Company
CAG-52.
Docket Nos. CP91-2451-000 and CP91-2684-000, Tennessee Gas Pipeline Company
CAG-53.
Docket Nos. CP91-2433-000 and CP91-2483-000, Tennessee Gas Pipeline Company
CAG-54.
Omitted
CAG-55.
Docket No. CI90-58-000, New England Power Company and The Narragansett Electric Company
CAG-56.
Docket No. CI91-52-000, Providence Gas Company and Prov Energy Investments, Ltd.
Docket No. CI91-28-000, Northern Minnesota Utilities
Docket No. CI91-75-000, Peoples Natural Gas Company, Division of UtiliCorp. and United Inc.
Docket No. CI91-78-000, Gulf States Pipeline Corporation
Docket No. CI91-79-000, Transok, Inc.
CAG-57.
Docket No. CI91-33-000, JMC Fuel Services, Inc.
Docket No. CI91-35-000, Connecticut Natural Gas Corporation
CAG-58.
Omitted
CAG-59.
Docket No. CP91-1315-000, Natural Gas Pipeline Company of America
CAG-60.
Docket No. CP91-956-000, Williams Natural Gas Company
CAG-61.
Docket No. CP91-1677-000, Northern Natural Gas Company
CAG-62.
Docket No. CP91-1991-000, Texas Gas Transmission Corporation
CAG-63.
Docket No. CP91-1992-000, Northern Natural Gas Company
CAG-64.
Docket No. CP91-1071-000, Natural Gas Pipeline Company of America
CAG-65.
Docket No. CP91-1501-000, Williston Basin Interstate Pipeline Company
CAG-66.
Docket No. CP91-2021-004, Texas Eastern Transmission Corporation
CAG-67.
Docket No. CP91-1439-000, Trunkline Gas Company
Docket No. CP91-1794-000, Tennessee Gas Pipeline Company
CAG-68.
Docket No. CP91-2466-000, Windward Energy and Marketing Company v. Pacific Gas Transmission Company and Pacific Gas & Electric Company
CAG-69.
Docket No. IS90-30-000, Amoco Pipeline Company

Hydro Agenda

H-1.
Project No. 2370-000, Pennsylvania Electric Company. Declaratory order.

Electric Agenda

E-1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.
Docket Nos. RP88-262-000, CP89-917-000, TA89-1-28-000, TA90-1-28-000, RP88-88-008 and RP87-103-000, Panhandle Eastern Pipe Line Company. Initial decision concerning rate design.

II. Producer Matters

PF-1.
Reserved

III. Pipeline Certificate Matters

PC-1.
Docket No. RM90-1-000, Revisions to Regulations Governing Certificates for Construction. Final Rule.
PC-2.
Docket No. RM90-7-000, Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates
Docket No. GP88-11-002, Hadson Gas Systems, Inc.
Docket No. CP88-286-004, Cascade Natural Gas Corporation v. Northwest Pipeline Corporation, *et al.*
Docket Nos. RP88-81-014, PR88-67-033 and RP88-175-002, Texas Eastern Transmission Corporation. Final Rule.
PC-3.
Docket No. CP88-557-001, Koch Hydrocarbon Company. Whether proposed pipeline facilities are exempt gathering facilities under section 1(b) of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 91-21728 Filed 9-5-91; 3:55 pm]
BILLING CODE 6717-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 4, 1991.

TIME AND DATE: 9:30 a.m., Wednesday, September 11, 1991.

PLACE: Room 600, 1730, K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Drummond Company, Inc.*, Docket No. SE 90-126.
2. *Hobet Mining, Inc.*, Docket No. WEVA 91-65.
3. *Utah Power & Light Company*, Docket No. WEST 90-320, etc.

The above three proceedings were set for oral argument in an order dated July 25, 1991, and involve similar issues pertaining to the procedures of the Department of Labor's Mine Safety and Health Administration for proposing civil penalties under its " Excessive History Policy."

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629 / (202) 708-9300 for TDD Relay 1-800-877-8339 for Toll Free.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 91-21613 Filed 9-5-91; 11:28 am]
BILLING CODE 6735-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 1:00 p.m., September 16, 1991.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, N.W., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the last meeting.
2. Thrift Savings Plan activities report by the Executive Director.
3. Review of budgets for FY 1992–93.
4. Review of status of audit recommendations.
5. Review of recordkeeping alternatives.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Dated: September 3, 1991.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 91–21577 Filed 9–4–91; 4:09 pm]

BILLING CODE 6760–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 9, 16, 23, and 30, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 9

Monday, September 9

2:00 p.m.

Briefing on III Report on GE-Wilmington Incident (Public Meeting)

Wednesday, September 11

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Final Rule Entitled "Material Control and Accounting Requirements for Uranium Enrichment Facilities Producing Special Nuclear Material of Low Strategic Significance" and Conforming Amendments to 10 CFR Parts 2, 40, 70, and 74 (Tentative)
b. Review of ALAB–952 Affirming Dismissal of Intervenor from Operating License Amendment Proceeding
c. United Nuclear Corporation's Request for Hearing (Tentative)

Week of September 16—Tentative

There are no meetings scheduled for the Week of September 16.

Week of September 23—Tentative

Wednesday, September 25

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 30—Tentative

Tuesday, October 1

1:30 p.m.

General Discussion of High Level Waste Program (Public Meeting)

3:00 p.m.

Discussion of Management—Organization and Internal Personnel Matters (Closed—Ex. 2)

Wednesday, October 2

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no sppecific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: September 4, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–21677 Filed 9–5–91; 1:02 pm]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 56, No. 174
Monday, September 9, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL 3990-3]

Protection of Stratospheric Ozone

Correction

In proposed rule document 91-20624 beginning on page 43842, in the issue of Wednesday, September 4, 1991, make the following corrections:

1. On the same page, in the first column, in the **DATES** paragraph, in the fourth line, "September 3", should read "September 13".

2. On page 43860, at the bottom of the page, the date in the file line should read "8-30-91;"

BILLING CODE 1505-01-D

federal register

Monday
September 9, 1991

Part II

Federal Maritime Commission

46 CFR Part 514

Tariffs and Service Contracts; Proposed Rule

FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 90-23]

Tariffs and Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: In order to implement the Federal Maritime Commission's Automated Tariff Filing and Information System ("ATFI"), this proposed action will establish regulations and user charges for the electronic filing, processing and retrieval of tariff data, including the essential terms of service contracts, for transportation in the foreign and domestic offshore commerce of the United States. In addition to providing for transition to an electronic tariff system, the proposed rule incorporates all non-obsolete tariff regulations of 46 CFR parts 515, 520, 550, 580 and 581, which may eventually be cancelled. To the extent necessary, the proposed action will provide an exemption whereby statutory publication and posting requirements can be met electronically. This action also proposes to incorporate by reference the "ATFI Batch Filing Guide" (with transaction sets). The new electronic system will substantially facilitate filing and retrieval of tariff data by the shipping public.

DATES: Written comments due by close of business on October 31, 1991.

ADDRESSES: Written comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L. Street, NW., Washington, DC 20573, and served on each other party to this proceeding. A copy of the Service List may be obtained from the Secretary.

FOR FURTHER INFORMATION CONTACT: John Robert Ewers, Deputy Managing Director, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5800.

SUPPLEMENTARY INFORMATION:

The Federal Maritime Commission ("Commission" or "FMC") administers, *inter alia*, the Shipping Act, 1916, and the Shipping Act of 1984, which apply to domestic offshore commerce (e.g., between the mainland and Hawaii or Puerto Rico), and to foreign commerce, respectively, for both inbound and outbound waterborne transportation. The statutes require that common carriers by water in these trades file and keep open to public inspection their "tariffs." Additionally, the Shipping Act of 1984 requires that service contracts be filed and that their essential terms be made available to the public in tariff format. See 46 U.S.C. app. 817 and 1707.

A freight "tariff" filed at the Commission is a publication of a carrier or conference which contains a *schedule* of rates, charges, and Tariff Rules applicable to its transportation of cargo.[1] A service contract is a special agreement between shipper(s) and carrier(s) that applies in lieu of the freight tariff. Mutual commitments are made in a service contract, with the shipper guaranteeing the carrier a minimum quantity of cargo over a period of time, in consideration for a commitment by the carrier to a certain rate and service level.

The statutes and implementing regulations require the Commission to ensure that certain minimum standards are complied with before tariff material is accepted for filing. For example, a tariff, or amendment thereto, must be clear and definite and must not duplicate or conflict with other tariff provisions already in effect. Moreover, tariffs must contain effective date provisions in compliance with the statutes, e.g., a minimum of 30 days' notice for an increase. If a tariff filing is defective in any of these respects, it is rejected and the filer must file again in the proper manner before the desired rate can go into effect. Similarly, service contracts and/or their essential terms may be rejected by the Commission if they do not meet certain statutory and regulatory requirements. See 46 CFR parts 515, 520, 550, 580, and 581.

In order to facilitate compliance with the law, there are substantial penalties for not filing, or if properly filed for not adhering to the provisions of, a tariff or the essential terms of a service contract. See, e.g., 46 U.S.C. app. 812, 815, 818, 1708, and 1709.

In addition to enforcing these penalties, the Commission uses the filed tariff and service contract data for surveillance and investigatory purposes and, in its proceedings, adjudicates related issues raised by private parties. For Commission proceedings, as well as in any court case, the tariff or service contract provision on file at the Commission and in effect, is official evidence of the applicable rate, charge or Tariff Rule, when so "certified" by the Commission. Currently, tariff-type data is filed with and maintained at the Commission in paper format.

While the first U.S. maritime regulatory body was established in 1916, it was not until 1961 that carriers in the U.S. foreign commerce were required to file tariffs containing all the rates, charges, and Tariff Rules applicable to their shipments.[2] The number of tariffs and amendments filed with the Commission has steadily grown until, in fiscal year 1990, there were 789,550 tariff pages received and 6,713 service contract filings in the U.S. foreign commerce. At the end of the fiscal year, there were 6,507 tariffs on hand at the Commission.

The enormous amount of paper to be processed by a limited number of employees led the Commission in the early 1980s to consider modern technology as a means of alleviating the paperwork burdens on both the government and the shipping industry, as well as enhancing the effectiveness of Commission regulation. A systematic exploration of this subject area by the Commission commenced with a series of studies, including an exhaustive Feasibility Study, considered and approved in principle by the Commission's Industry Advisory Committee in 1986. The Feasibility Study developed into a Commission Request for Proposals (RFP) and award of a contract for the design, development and operation of an Automated Tariff Filing and Information System ("ATFI" or "System").

I. Introduction and Background

Most of ATFI has been designed and developed.[3] The System's prototype phase (IV) began in April 1990, but before allowing volunteers from the shipping industry to try their tariffs out on the System, the Commission and the Contractor mutually agreed upon a list of desirable changes which was developed through Commission and Contractor user comment. These changes included improvements on both technical and tariff policy matters. In July 1990, the basic contract was modified to incorporate these changes into the System.

[1] A Customs "tariff" is a publication of the Government containing a *schedule* of Customs duties.

[2] A relatively small number of carriers in the domestic offshore commerce have been required to file tariffs since the enactment of the Intercoastal Shipping Act, 1933.

[3] In August 1989, a contract was awarded for the design and development of ATFI and work began under the contract in September 1989. Under FMC supervision, the Contractor validated (by comparing with, and updating, the specifications of the original RFP) the requirements and functionality of, and designed and developed, the System (Phases I through III of the contract). By March 1990, development was far enough along to be able to make available to the public technical transaction sets, so that potential filers of tariff data could begin developing their own software to electronically interface with ATFI, i.e., by being able to prepare tariff data in the proper format for filing by modem with, or physical submission on magnetic media to, the FMC.

Accordingly, on August 1, 1990, the Commission issued a second ATFI Notice of Inquiry ("NOI"),[4] requesting public comment on some of the basic features being considered for ATFI and how they may impact current paper tariff practices. On September 5, 1990, the first public demonstration of the System was held and public comments on the NOI were submitted by 22 firms in October 1990 and analyzed by the Commission.

On December 26, 1990, the Commission issued a first Interim Report ("First Interim Report") which considered the comments, resolved the issues raised in the Notice of Inquiry, and appended the ATFI "Batch Filing Guide" (containing, *inter alia*, transaction sets, file transfer formats, data dictionary, and code reference tables). On February 19, 1991, Supplement # 1 to the "Batch Filing Guide" was released (and mailed out) in the form of an Information Bulletin (IB 3–91) and was also distributed to over 100 attendees of ATFI public demonstrations in Washington, D.C. On April 11, 1991, Supplement # 2 to the "Batch Filing Guide" was issued as IB 11–91. The Reports in this proceeding, as well as the "Batch Filing Guide" (as updated), can be found in Pike and Fischer "Shipping Regulation," SR, Pages 322:393 and 322:421, respectively.

On March 25, 1991, the Commission issued a Second Interim Report ("Second Interim Report") which responded to concerns of four Electronic Tariff Filer Firms, which were raised in their testimony at the Commission's fiscal year 1992 authorization hearing held on February 28, 1991, by the Subcommittee on Merchant Marine of the House Committee on Merchant Marine and Fisheries, and which were submitted to the Commission on March 8, 1991. The Second Interim Report clarified the matters raised, established a schedule (to the extent possible) and reiterated that the "Batch Filing Guide" is all that any person needs to begin immediate development of its own batch filing software. IB 9–91, containing Technical Questions and Answers, was issued on April 10, 1991.

The Commission's Third Interim Report ("Third Interim Report") in this proceeding and Supplement # 3 (IB 20–91) to the "Batch Filing Guide" were issued on July 23, 1991. The Third Interim Report finalized most of the remaining issues listed in the August 1990 Notice of Inquiry, so that a Notice of Proposed Rulemaking could be drafted and issued. The additional comments of ten of the original commenters in this proceeding were addressed and further comments were invited on the modified approach to the Harmonized System and the proposed transition plan. The following table provides an index of the proposed rule (part 514) sections where the decisions of the Interim Reports are implemented.

INDEX TO PART 514 SECTIONS IMPLEMENTING THE INTERIM REPORTS

A. Filing Matters	
1. Harmonized System	13(a).
2. Standardized Location Names.	10(b); 11(b)(10).
3. Ranges and Groups	10(b); 11(b)(10); 15(b)(1).
4. Other Defined Terms	2.
5. Addition of Port or Point	9(b)(8).
6. Standardized Currency	10(c).
7. Between Tariffs	11(b)(10); 13(b).
8. Tariff Supplements	9(d).
9. Tariff Adoption	4(d)(6).
10. Multiple Amendments on Same Day.	9(c).
11. Special Case Numbers	7(k); 9(b)(19).
12. Bills of Lading	15(b)(8).
13. Anti-Rebate Certification and Tariff Notice.	1(c)(1)(iii); 8(j).
14. Service Contracts and Essential Terms:.	
Filing	7(g)(1); 17.
Common format	7(h)(2)(i)(A).
Standard numbering (ETs and Tariff Rules).	15(b); 17(d)(8).
15. ETs and Tariff Rules	
"Burying of rates"	10(d) and comment.
Algorithms	10(d).
16. Governing and General Reference Tariffs.	12.
17. Batch Filing Software	8(l).
18. Exemptions	8(a).
B. Retrieval Matters	
19. Pages	8(k).
20. Database Tapes	20(d).
21. Remote Retrieval	20(c).
C. Technical and General Matters.	
22. Personal Computers	8(e).
23. Transition	NA to CFR.
24. EDIFACT Standard	NA to CFR.

Accordingly, this Notice of Proposed Rulemaking is now being issued for public comment. Phased participation by filers in the full-implementation schedule will be decided by separate Commission action to allow needed flexibility and to avoid the placement of anachronistic material in the CFR. Electronic filers will use the new part; those temporarily exempt from electronic filing will continue to use the applicable old part(s), i.e., parts 515, 520, 550, 580 and 581. Eventually, the old parts will be repealed, leaving the one new part 514.

II. Section by Section Analysis

In order to implement ATFI, the Commission is proposing to establish a new CFR part 514, "Tariffs and Service Contracts," to regulate the format, filing and retrieval of tariffs in both the foreign and domestic offshore commerce. Accordingly, the new part will eventually absorb the provisions of current: part 515—Filing of Tariffs by Marine Terminal Operators; part 520—Filing of Tariffs by Terminal Barge Operators in Pacific Slope States; part 550—Publishing, Filing and Posting of Tariffs in Domestic Offshore Commerce, part 580—Publishing and Filing of Tariffs by Common Carriers in the Foreign Commerce of the United States, and part 581—Service Contracts.

While much of it is new because it involves ATFI, this proposed rule incorporates all regulatory provisions from the five old parts that would not be obsolete under ATFI or otherwise. This involves combining provisions applicable to both domestic and foreign commerce or making the provision in one old part apply to the entire new part, if similar in substance, and setting forth separately both provisions, where different. Accordingly, style changes are necessary to combine similar provisions from the old parts. For source and language questions, a Derivation Table has been provided.

Organizationally, the proposed rule changes the structures of the old rules for logical positioning of shorter sections which self contain provisions relating to the same subject. Terminology changes are also made to achieve clarity, accuracy, current usage and legal precision, while omitting surplus, unnecessary and executed provisions.

To a large extent, the regulatory provisions contained in the proposed rule are structured in conformity with ATFI user-manual indexes, e.g., by ATFI elements, such as organization and tariff records, TLIs, etc. Moreover, where they would facilitate understanding and compliance, simulated ATFI screens are included in the rule, itself, with regulatory provisions keyed to the screen fields, which must be entered properly and accurately in order for filed data not to be rejected.

In addition to the basic regulatory provisions, user charges are also provided for various services. These are

[4] The NOI was issued (55 FR 31199) to provide advance notice to the public of the proposed refined functionality and associated implementing technology of ATFI. **Federal Register** notices on this general subject previously appeared on December 22, 1987 (52 FR 48504); June 13, 1988 (53 FR 22048); and, December 29, 1988 (53 FR 52785).

provided in § 514.21 and are discussed in the analysis thereof.

PART 514—TARIFFS AND SERVICE CONTRACTS

Subpart A—General Provisions

Section 514.1—Scope, Purpose, Requirements and Penalties

The provisions of this section are intended to track similar sections in the five old parts. To address the electronic functionality of ATFI, new provisions at paragraphs (a)(5), (b)(3), and (c)(4) set forth scope, purpose and general requirements, respectively. Paragraph (c)(3)(ii) adapts for ATFI the form exemption for terminal barge operators in Pacific Slope States. The procedures for submitting anti-rebating certifications, as well as the modified tariff cancelation provisions for non-compliance, are described in paragraph (c)(1)(iii) and paragraph (d)(3) provides for notification of rejections by electronic mail, as opposed to the practice under the current paper system.

Section 514.2—Definitions

All definitions now contained in the current old parts are contained in this section, at least by cross reference. The categories of the various definitions are as follows:

Substantially the same as the original, but some are combined and restructured: 1916 and 1984 Acts; Checking; Co-Loading; Commission; Common carrier; Conference; Contract party; Controlled carrier; Dockage; Domestic offshore carrier; Equipment interchange agreement; Essential Terms and Publication; File or filing of service contracts; Forest products; Free time; General decrease and increase; Geographic area; Handling; Joint rates; Loading and Unloading; Local Rates; Loyalty contract; NVOCC; Ocean common carrier; Ocean freight forwarder; Open rate; Person; Point of rest; Port range; Port terminal facilities; Practices; Proportional rates; Rules (in a tariff); Service contract and Records; Shippers' association; Statement of essential terms; Submit; Tariff amendments; Tariff of general applicability; Terminal services and Storage; Through intermodal transportation; Through rate (2 definitions); Through route; Through transportation; Time/volume rate; Transshipment; Usage; Wharfage and Wharf Demurrage.

New definitions for ATFI are: Assessorial and Charge; Assessorial calculation; Availability; Batch filing and Guide; Bill of lading; Combination rate; Commodity description and Index; Commodity description number; Conformity checks; consignee; Data element dictionary; Destination scope; Domestic offshore tariff; Edit checks; Effective and Expiration dates; Filing date; FMC examiner; General reference tariff; Governing tariff; Harmonized Code and System; In-bulk batch filing; Inland point; Inland rate and Table; Interactive filing/retrieval; Intermodal transportation; Location group; On-line batch filing; Organization name and Record; Organization Scope; Owner (of tariff material); Page-based tariff; Publisher; Rate; Retrieval; Scope; Special case number; Special permission; Specimen bill of lading; Syntax check; Tape batch filing; Tariff record; Tariff Rules; Termination date; Thru date; TLI; Trade name; Traditional tariff; Transaction set; Validity check; Via ports.

Definitions modified for ATFI: Commodity rates; File or filing; Open for public inspection; Post, posted, posting; Tariff matter.

Definitions whose applications are expanded: Amendment; Bulk cargo; Container; Heavy lift; Open for public inspection; Port; Project rates; Round trip excursion voyage; Shipment; Shipper; Substituted service; Tariff; Tariff filing; Tariff matter.

Definitions which are new for restructured organization: Domestic offshore commerce; Foreign commerce; Freight forwarder; Port.

Section 514.3—Exemptions and Exclusions

The exemptions contained in § 514.3 are taken from the old sections and adapted to the reorganization without change in substance, with the exception of paragraph (b)(4) which, in order to make the transition to an electronic system, modifies the conditions for the limited exemption for military cargo in foreign commerce, and paragraph (e), which cross-references to the temporary exemption from electronic filing under § 514.8(a).

Section 514.4—Content, Filing and Cancelation of Tariff Material; General

The provisions in this part are primarily those of the old parts, combined, restructured and expanded in scope, as well as modified for ATFI terminology, where indicated in the Derivation Table, with the following exceptions. Paragraph (b)(1) prohibits foreign language tariffs, but allows certain items to be expressed in foreign languages under certain conditions. Paragraph (c)(1) is new, tracking sections 9(a)–(c) of the 1984 Act on Controlled Carriers. Paragraph (d)(1) cross-references to § 514.8(f) for procedures to obtain a USERID and password for filing/editing authority. Paragraph (d)(6) provides an ATFI procedural equivalent for tariff adoption, as further explained in section 9 of the First and Third Interim Reports. The new procedure will accommodate linking the tariff to the existing or newly established organization record (see §514.11(a)) of the succeeding firm, thus providing for historical continuity of historical records for all successions.

Sections 514.5 and 514.6—[Reserved]

Subpart B—Service Contracts

Section 514.7—Service Contracts in Foreign Commerce

As explained in section 14 of the First and Third Interim Reports, service contracts will be filed in paper form within 10 days of the electronic filing of their essential terms. This technological development results in the bifurcation of old part 581 into new §§ 514.7 and 514.17, and, for service contracts, is implemented in paragraphs 5(a) and 5(g)(1) of § 514.7. The receipt of the two related filings at different times also dictates adjustment of time frames in paragraphs (j)(1) and (k)(1). Paragraph (e) contains recently approved language changes from Docket No. 91–1, Bonding of Non-Vessel-Operating Common Carriers. New ATFI terminology (e.g., "Tariff #") is used in paragraph (h)(1), where electronic ATFI terms must be used in the paper service contracts. To the extent feasible, paragraph (h)(2)(i)(A) urges parties to use a common format for the two filings, as discussed in section 14(b) of the First Interim Report. Paragraph (k)(2)(i) continues the procedure for correcting essential terms, but prescribes the use of special case numbers, as described in section 11 of the First Interim Report. Otherwise, old part 581 has been substantially restructured for clarity and logical placement of material.

Subpart C—Form, Content and Use of Tariff Data

Section 514.8—Electronic Filing

In paragraph (a) of § 514.8, the procedure for obtaining a temporary exemption from electronic filing requirement is proposed to be the same as for a petition for any exemption from the requirements of the shipping statutes or regulations. This approach is the result of comments to section 18 of the First and Third Interim Reports.

Paragraphs (b) through (d) list the instruction guides available to users, and describe the three basic types of

electronic filing, as well as format requirements. Paragraph (d) proposes to incorporate by reference the "Batch Filing Guide," including the transaction sets, and contains procedures for requesting additions to the data dictionary and reference tables. The Commission made substantial efforts during the ATFI system design and prototype use to include sufficient terms and data elements to allow shipments to be properly and adequately described using ATFI terms, which are identical or similar to terms which have historically been used to describe ocean freight rates and charges. However, the need for additional data elements or reference table additions for existing data elements will be encountered, especially when new technology is introduced in the shipping industry.

As discussed in section 22 of the First and Third Interim Reports, paragraph (e) describes the ATFI basic equipment requirements, i.e., a modem, and either a VT-100-type terminal or a personal computer with VT-100-emulation software. In a large number of instances, the PC will already be an ATFI user asset, and in many cases, the ATFI user will also already own a modem and/or VT-100 emulation software, reducing or eliminating the need for acquisitions to gain access to ATFI over a standard voice telecommunications network.

Paragraphs (f) through (h) of §514.8 set forth procedures for obtaining USERID and password, connecting to ATFI, and selecting particular objects from several menus, for the purpose of adding or editing tariff material.

Paragraph (j) contains the anti-rebate tariff notice to be displayed at logon, as explained in section 13 of the First and Third Interim Reports.

To implement a fully electronic system, a partial exemption from the existing requirements for carriers and conferences to furnish paper copies of tariff material to subscribers and other members of the public will be desirable. Proposed paragraph (k)(1) will allow tariff owners to make available to the public tariff material in either paper or electronic format, but otherwise tracks the policies of existing regulations. Pursuant to section 35 of the Shipping Act, 1916, 46 U.S.C. app. 833a, and section 16 of the Shipping Act of 1984, 46 U.S.C. app. 1715, the Commission finds that this partial exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce.

Because of possible variance between paper and electronic versions, paragraph (k)(1)(v) provides that the tariff residing in the ATFI database is the official version.

Paragraph (k)(2) implements the Commission's decision in section 19 of the First and Third Interim Reports not to provide paper copies of tariff material except in certain limited situations, such as for Commission certification of a tariff to a court at the request of a party to the court case.

As explained in the Second Interim Report, as well as in section 17 of the First and Third Interim Reports, paragraph (l) reiterates the Commission's decision not to furnish batch filing software in competition with private-sector third-party vendors. The certification procedures for such commercially developed software are also set forth.

Paragraph (m) provides a brief explanation of the screens used for illustration in the part, as well as of the actual ATFI screens used for filing and retrieval.

Paragraph (n) describes the types of ATFI's electronic conformity (edit) checks to which all proposed filings must conform or be rejected. The Commission's tariff examiners and supervisors will further scrutinize certain flagged tariff items which survive the conformity checks for more subtle types of material that requires rejection under the shipping statutes and the Commission's rules.

Section 514.21 provides for user fees for various services described in § 514.8.

Section 514.9—Filing/Amendment Codes and Required Notice Periods

This section sets forth both the required notice periods for effectiveness of various tariff materials, as well as the required codes or symbols that must be entered by the filer for such materials. Symbols from parts 550 and 580 are carried forward, except for *"N"* (reissued matter) and new symbols *"G," "M," "P," "S," "T,"* and *"X"* are added.

As discussed in section 5 of the First and Third Interim Reports, paragraph (b)(16)(ii) provides for addition of a port or point effective upon filing, but prohibits the symbol *"P"* from being used for a deletion. Paragraph (b)(19) sets forth the requirements for use of the special case symbol (*"S"*) and numbers, including the requirement for the filer to put its tariff in order after a rejection or overturning a rejection, as explained in section 11 of the First and Third Interim Reports.

Paragraph (c) addresses multiple amendments received on the same date, while paragraph (d) explains the extent to which "supplements" may be used in the new electronic system, as explained in sections 10 and 8, respectively, of the First and Third Interim Reports.

Section 514.10—Other Items Used Throughout ATFI.

This section sets forth functions or items used throughout ATFI other than the Filing/Amendment Codes described in the previous section. Paragraph (a) carries forward from current rules the concepts of filing, effective and expiration dates, but adds the new concepts and functions of "Thru dates," "Access dates," "History," "−Rev," and "+Rev" to facilitate electronic filing and retrieval.

Paragraph (b) implements the Commission's decision in sections 2 and 3 of the First and Third Interim Reports to validate place names from ATFI glossaries, but to allow creation of groups to obviate the need for entering certain lists of points or places for every TLI.

Section 6 of the First and Third Interim Reports raised the possibility of requiring rates to be expressed in U.S. dollars only, but, based upon the comments received, decided to permit rates, and especially local charges, to be in the local foreign currency. Paragraph (c) provides for foreign currencies, the conversion rates for which will be listed in ATFI and updated periodically. The conversion rates will not be official, i.e., for booking or billing purposes, but may be used for comparison.

Paragraph (d) prescribes and briefly describes the algorithms to be used for calculating assessorial charges to be added to the commodity description, TLI or Tariff Rule, as discussed in section 15 of the First and Third Interim Reports. If properly utilized, as set forth in the "Batch Filing Guide," these charges will be clear and understandable to the retriever, and there is no need for a separate rule to prevent "the burying of rates," e.g., within a Tariff Rule. After separate calculation of all assessorials potentially applicable to a shipment, the retriever may also use the bottom line calculation functionality to arrive at the total cost of his or her shipment, as discussed in section 15 of the Third Interim Report. If this is done before shipment, however, there may be some condition (subsequent) values not known to the retriever.

Section 514.11—Organization and Tariff Records; Tariff Scope

ATFI's organization and tariff records contain, in different, sometimes coded format, most of the information currently found on Title Pages in the traditional paper-based system. For organization records and tariff records,

it is expected that different passwords will be used; probably only one for the organization record, while possibly many for different tariffs or even parts of tariffs of the same parent organization. Paragraphs (b)(6) and (b)(7) provide for entering default values for weight and volume units, as well as for currency, to be used throughout the entire tariff unless specifically noted. This feature should conserve filing time. Paragraph (b)(8)(ii) requires foreign-based NVOCCs to list the name and address of a U.S. agent for service in the first address field of a Tariff Record. Paragraph (b)(10) addresses tariff scope (origin and destination), and how these items affect through rates and "between tariffs," as discussed in section 7 of the First and Third Interim Reports.

Section 514.12—Governing and General Reference Tariffs

Due to the electronic functionality of ATFI and its basic design, certain types of governing tariffs provided for by the current regulations will not be used in the new system as governing tariffs, but will be handled differently. Thus, ATFI features, such as the Harmonized Code approach, inland rate tables, commodity description record and TLI notes, will obviate the need for and supersede commodity and freight classification governing tariffs. Otherwise, the proposed rule retains existing provisions for governing and general reference tariffs, but adapts them for ATFI, to the extent possible. Governing tariffs, such as Rules Tariffs (and assessorials contained therein), must be electronically filed and linked to the governed tariff. General reference tariffs, such as Equipment Interchange Tariffs (with paper format prescribed), may continue to be on file (and submitted) in paper form, as discussed in section 16 of the First and Third Interim Reports. Additional provisions in the proposed rule require the filer to be careful in making governing tariff items applicable to a TLI to avoid electronic conflicts with items in the governed tariff.

Section 514.13—Commodities and Tariff Line Items ("TLIs")

Just as the commodity rate is the heart of the paper tariff, the commodity (description and code) and associated tariff line item(s) are the nucleus of the electronic ATFI system. The shipper is entitled to know not only the exact rate and all assessorial charges for the intended shipment (and billing), but also the exact commodity to which the rate applies. The Commission's dockets of tariff adjudication proceedings (especially informal dockets) are replete with controversies over the commodity covered by a tariff rate, usually involving claims that the shipment was of a tariffed commodity other than the one appearing on the bill of lading or invoice. To minimize disputes between shipper and carrier on commodity descriptions, § 514.13(a) will provide needed standardization by the required use of the Harmonized System (for both description and related coding), to the extent possible for the almost infinite types of commodities in the shipping business. Section 514.13(a) provides for a modified use of the Harmonized System, as further discussed in section 1 of the Third Interim Report. Any comments requested in the Third Interim Report on the Commission's revised approach will be considered by the Commission in the finalization of this proposed rule.

Paragraph (b) on TLIs contains a simulated screen which provides an outline of the more important subjects addressed in the text, which will also be a composite mini-review of the manner in which items, described in §§ 514.9 through 514.11 of the proposed rule, interact, when collected and applied to the tariff line item. Other items displayed and explained through examples are codes contained in the Data Element Dictionary's valid reference tables, such as codes on service, rate basis, packaging, and stowage, as well as on container size, type and temperature.

Paragraph (c) provides a very simplified example, with illustrative partial screen, of a "bottom-line" rate calculation, which, while tedious to get used to, should substantially facilitate retrieval of the costs of shipments, both future (for booking) and past (for rating of a bill of lading).

While much of § 514.13 is new in order to reflect the electronic approach to commodity rates, the paragraphs of § 514.13 adapt to the ATFI system current regulations which require clarity and accuracy ((a)(2)(i), (b)(1), (b)(13) and (b)(17)); and which address: mixed shipments ((a)(3)(iii)); project rates ((a)(3)(iv)); commodity index ((a)(4)); time/volume, open and independent-action rates ((b)(19)); special or emergency rates ((b)(10)); and rate bases, such as *ad valorem* and weight/measure, and how they apply to green salted hides in foreign commerce and automobiles in domestic offshore commerce ((b)(17).

Section 514.14—Intermodal and Transshipment Services; Inland Rate Tables

Due to similarity of subject and requirements, § 514.14 accumulates various current provisions regarding intermodal transportation (including through transportation) and transshipment services. An ATFI inland rate table for use only for intermodal transportation using "combination rates," which are added to TLIs (*vis-a-vis* "through rates" included in the basic TLI), is shown and briefly explained.

Section 514.15—Tariff Rules

Under the electronic system, every item required to be filed in a tariff must be filed in a certain "object," such as in a commodity description or TLI. For all such items that do not properly belong in the other objects, the Tariff Rule field acts as a catch-all, not, however, without precedent from current regulations. Thus, where current regulations require information to be contained on a "Title Page" or in a certain section of the paper tariff, the proposed Tariff Rule section in the electronic system is often the intended new repository.

Like all other sections of the proposed rule, §514.15 is drafted to apply to both foreign and domestic offshore commerce, as applicable, with differences in substance retained from the old rules.

The proposed section tracks the numbering of current part 580 and, to a lesser extent, part 550. As discussed in sections 14 and 15 of the First and Third Interim Reports, standard numbering of Tariff Rules will continue.

Proposed § 514.15 retains Tariff Rules on: "Scope," "Application of Rates," "Effective Date" (now called "Rate Applicability Rule" to distinguish the subject from the more common meaning of "Effective Date"), "Heavy Lift," "Extra Length," "Payment of Freight Charges," "Freight Forwarder Compensation," "Surcharges and Arbitraries," "Minimum Quantity Rates," "Ad Valorem Rates," "Transshipment" (adding "Intermodal Services"), "Co-Loading," "Open Rates," "Hazardous Cargo," "Green Salted Hides," "Returned Cargo," "Shippers' Requests and Complaints," "Overcharge Claims," "Use of Carrier Equipment," "Automobile Rates," "NVOCCs in Foreign Commerce," "Certification of Shipper Status" (including recently approved language changes in Docket No. 91-1, Bonding of Non-Vessel-Operating Common Carriers), and "Bills of Lading," the clauses of which are

required to be filed electronically, as discussed in section 12 of the First and Third Interim Reports.

New mandatory Tariff Rules in proposed §514.15 address "Carrier Terminal Rules and Charges," "Time/Volume Rates," "Loyalty Contracts," "Definitions," "Symbols," "Access to Tariff Information," and "Seasonal Discontinuance."

While the Tariff Rules are the repository of much miscellaneous data required to be filed, the design requirements of ATFI still require certain items that may be related to the subjects of Tariff Rules to be entered under other objects, such as commodity descriptions and TLIs, as described elsewhere in the proposed rule. For similar reasons, the proposed section omits current Tariff Rules, such as "Container Description" (addressed by container size and type codes in the TLI), "Commodities Unnamed in the Commodity List" and "Mixed Shipments" (handled by the Harmonized Code provisions); and "Project Rates" and "Proportional Rates" (addressed by proposed regulations on commodity descriptions, TLIs, and intermodal rates, including inland rate tables.)

Of course, as before, if a filer needs a Tariff Rule to supply new or additional information related to, but not belonging in another tariff object, it may use paragraph (c) of §514.15 for Optional Tariff Rules, if the subject does not belong in a Mandatory Tariff Rule under paragraph (b).

Where any charge or similar item (assessorial) is contained in a Tariff Rule, it must be set forth in algorithm form, but algorithm tables can be constructed for complex structures of charges.

The new, proposed approach should facilitate the retrieval of all essential tariff data by shippers and, if the electronic design is properly followed, render the phrase "burying of rates in rules" obsolete and archaic.

Section 514.16—[Reserved]

Section 514.17—Essential Terms of Service Contracts in Foreign Commerce

As restructured for the new organization of the part (see the section-by-section analysis for § 514.7, above), § 514.17 adapts regulatory provisions of old part 581 for essential terms to the electronic requirements of ATFI. An illustrative screen is provided to guide the filer and retriever. As described in section 14 of the First and Third Interim Reports, paragraph (d)(8) provides for standard numbering of essential terms.

Section 514.18—Special Permission

Section 514.18 combines the special permission provisions of old parts 550 and 580 (including the filing fee discussed under § 514.21) so that the new section applies to both domestic offshore and foreign commerce. For the electronic system, it requires the use of the special case number and symbol, as discussed in § 514.9(b)(19), and requires various names and numbers to be in ATFI format, e.g., tariff code, d/b/a, etc.

Section 514.19—Suspension of Tariff Matter

Section 514.19 adapts to the ATFI system the current provisions for suspension of tariff matter of domestic offshore carriers and controlled common carriers in foreign commerce. Paragraph (c) also provides for other suspension situations. Rather than require affected carriers to file suspension supplements, as is currently the practice, the proposed new procedures provide for direct effectuation of the suspension in the carrier's tariff by the Bureau of Tariffs, Certification and Licensing (BTCL), primarily by changing the thru date to the last day of the suspension period. This direct amendment of a tariff by the Commission, along with similar procedures for cancelation under § 514.4, is considered the most efficient of all options and is one of the very few, limited situations where a tariff can be changed by someone other than the filer.

Section 514.20—Retrieval

Retrievers will be required to register for a USERID and password under §514.8(f). As discussed in section 21 of the First and Third Interim Reports, applicable law and Congressional policy dictate that retrievers be limited to one tariff at a time (except for governing tariffs) and that they be logged off after a period of time set by the Commission, e.g., 30 minutes. The actual period may vary from time to time, depending on experience with users. Filers accessing their own tariffs are not subject to the restrictions.

Full database tapes will be provided to subscribers on a daily, weekly or monthly basis, as described in section 20 of the First and Third Interim Reports. Again, user demand may eventually suggest refinements of procedures and frequency of issuance.

User charges are provided for various retrieval services, as set forth in § 514.21.

Section 514.21—User Charges.

The Independent Offices Appropriations Act ("IOAA") at 31 U.S.C. 9701 provides that "each service or thing of value provided by an agency *** to a person *** is to be self-sustaining to the extent possible." In order to meet this objective, the IOAA authorizes the head of each agency to prescribe by regulation the charge for a service or thing of value provided by the agency.

The IOAA also provides that each charge shall be fair and based on:

(A) The costs to the Government;

(B) The value of the service or thing to the recipient;

(C) Public policy or interest served; and

(D) Other relevant facts.

Section 3(a)((1) of Office of Management and Budget ("OMB") Circular No. A-25 (September 23, 1959) requires that a reasonable charge be made to recipients of a measurable unit or amount of Government service (or property) from which they derive a special benefit in order that the Government recover the full cost of rendering that service. A March 4, 1991, Notice (56 FR 9026) of Plans for Revision of OMB Circular A-130 (50 FR 52730; December 12, 1985) proposes the adoption of the policy that user charges for information products be no higher than the cost to the government of disseminating the information. This policy is consistent with the Freedom of Information Act, 5 U.S.C. 552.

The charges in proposed §514.21 are designed to comply with these criteria, as follows:

Retrieval-related services for which user charges are proposed in § 514.21 are: (g) remote retrieval by modem, and (j) the provision of full database tapes to subscribers-retrievers, both of which are reasonably related to the projected cost, to the extent cost can be estimated at this time before full implementation. The Commission anticipates early revision of many types of charges after some experience with both usage and costs.

In paragraph (g), the 50-cents-per-minute ($30 an hour) connect-time charge for remote retrieval (with the caller paying his/her own phone charges) is on the low side of current per-minute charges for access to other large commercial databases of information which the public finds necessary or desirable for doing business. It also approximates the Contractor's projected costs, as reflected in its winning offer, and is relatively easy to collect through a "900" number. It is, therefore, proposed for the start-up of full-scale operation.

However, any per-minute charge may not accurately cover computer calculations, the direct costs of which should also be recovered. For example,

during the same connect-time period, a frequent and skilled retriever could complete many more operations (such as calculations of bottom-line rates) than an unskilled retriever with a need for a lower volume of information.

To arrive at a proper charge for computer operations ("alternate formula"), comments are also invited on the inclusion of additional factors such as central processing unit (CPU) workload (CPU time in seconds), and number of input/output (I/O) commands executed to retrieve stored tariff data from disk for display. Based on recent simulated retrieval sessions without a full data base, a reasonable charge including all necessary factors would be $15 an hour connect time; 25 cents per CPU second; and 0.4 cents per I/O. For one bottom-line rate calculation, this would result in a total charge of about $3.50 under the simulated test, while pure connect time at $30 an hour would range from $2.50 to $5.00.

After the finalization of all details of how retrievers will connect to the system and pay the charges, and after some experience with full operation, the Commission may propose the alternate formula. Until then, however, the 50-cents-per-minute charge appears reasonable. Filers entering ATFI on a "filer" USERID and password would not be subject to a per-minute charge for accessing their *own* tariffs.

In paragraph (j), the proposed cost of the data-base tapes is based on the cost of the tape, itself, plus processing to prepare them for distribution. While these two factors can be fairly accurately estimated, the Commission does not know at this time the size of the database and how many tapes it will take to handle the full database or any updates. Moreover, the database will grow over the first year of implementation, as filers are phased in. Accordingly, to the extent possible to estimate at this time, the proposed charges appear to be reasonably related to cost.

Similar to retrieval of information items, paragraph (b) provides a proposed charge of $15 for computer tape(s) containing the user manual in WordPerfect format, which can be printed out from the user's own terminal. Since the entire manual is over 500 pages, the tape vehicle appears to be the most economical method of making the manual available and, compared to even 5 cents a page for duplication plus postage, is an eminently reasonable charge.

Paragraphs (a)—Application for exemption; (d)—Certification by Commission Secretary of tariff data; and (h)—Printing at the Tariff Control Center, are all cross-references to other sections of the chapter where the charges have been previously justified and established.

Paragraph (f), Application for special permission, is also based on the current chapter, i.e., §§ 550.18(a)(3) and 580.15(b). However, in proposed § 514.21, the filing fee is proposed to be raised to $100 from the $90 appearing in the old rules, last established in 1982. See **Federal Register** of July 6, 1982, 47 FR 29278, for predecessor §§ 531.18(a)(3) and 536.15(b). Recipients of special permission authority benefit by obtaining relief from specific tariff rules which would otherwise prove to be economically more costly or time-consuming. Evaluation of the justification provided by the applicant requires a considerable amount of Commission staff effort, and administrative processing also adds to the costs of reviewing each application. The Commission believes that the $100 proposed fee, a modest $10 increase since 1982, would comply with the IOAA, help cover administrative costs and not be an undue burden on the applicant.

Paragraph (c), Registration for User ID and password, proposes a $100 charge for initial registration of a firm as a filer and/or retriever. The $100 charge covers the approximate costs of processing the registration, similar to the administrative functions required for processing an application for special permission under paragraph (f). Additionally however, the Commission, or its contractor, must provide special benefits in the form of "Help" telephone service to users and further processing of changes or additions to USERID and ensure that user changes to passwords are trouble-free. These on-going services, unlike the one-shot application for special permission, would appear to justify the $100 to cover the costs of the services.

Each firm registration entitles the firm to one free individual user password, the processing and maintenance of which is about the same as for the firm, itself. Where firms desire a change or multiple individual user passwords, however, the benefits of administration of the additional applications and maintenance are estimated to be worth, on the average, $25 for each such individual over a long period of time.

Paragraph (e) proposes a $200 charge for certification of batch filing software of firms which have voluminous data to file and maintain. Such firms include large carriers and conferences, as well as third-party vendors of tariff filing services for such carriers and conferences. While not charging for filing, itself, which can be performed interactively without a user charge, batch filing has a greater risk of error, because of the higher volume and the fact that the edit checks are applied to the proposed filings after they have been "finalized" by the filer. The standardized transaction sets, to which the software must comply, provide the special benefits of ensuring minimization of errors, fewer rejections and more expeditious filing—all of which enhance the competitiveness of the filer. At the same time, the costs for certification of such software are more than, for example, processing of registration. The certifying contractor must not only set the appointment for transmission of trial data, monitor the transmission and note problems, if any, but also, if not successful or fully satisfactory to the filer, go through the entire process again, after the filer has made refinements to correct the problems. The $200 charge for certification approximates these costs of both labor and computer activity.

As noted previously, the user charges in proposed § 514.21 would be reexamined after experience during full implementation and proposed for change, in format and/or magnitude, as necessary or desirable.

Section 514.91—OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act—[Reserved]

The following Derivation Table shows the source provisions for new part 514 from old parts 515, 520, 550, 580 and 581.

DERIVATION TABLE FOR PART 514

[IR Sec. = Third Interim Report and Section Therein]

New section	Old section
514.1(a)(1)	580.0(a).
514.1(a)(2)	550.0(a), first sentence.
514.1(a)(3)	515.1.
514.1(a)(4)	520.1(a).
514.1(a)(5)	New—ATFI.
514.1(b) introductory paragraph.	580.0(b), third sentence.
514.1(b)(1)	515.2, first sentence.
514.1(b)(2)	550.0(b), first sentence.
514.1(b)(3)	New—ATFI.
514.1(c)(1)	580.0(b), first two sentences; 581.2.
514.1(c)(2)	550.0(a), second sentence; 550.3(a); 550.3(p)(1), first sentence.
514.1(c)(3)(i)	515.3 without excepting clauses; 515.4; 515.5, first sentence.
514.1(c)(3)(ii)	520.1(b); 520.1(c); 520.2; modified for ATFI.
514.1(c)(3)(iii)	580.5(c)(2)(ii)(B); modified for ATFI.
514.1(c)(4'	New—ATFI.
514.1(d)(1)	550.3(m); applicability expanded.

DERIVATION TABLE FOR PART 514—Continued

[IR Sec. = Third Interim Report and Section Therein]

New section	Old section
514.1(d)(2)	550.0(b), second sentence; 550.3(b), introductory paragraph, first sentence; 550.3(l)(1), first and second sentences· 580.0(c)(1) first sentence; 580.10(d)(1), first sentence; 581.8(a)(1); combined and restructured.
514.1(d)(3)	Modified for ATFI; 550.3(l)(1), second sentence; 580.10(d)(1), second sentence.
514.1(d)(4)	550.3(l)(2), first sentence; 580.10(c)(1), second sentence; applicability expanded.
514.1(d)(5)–(6)	New—ATFI.
514.1(e)(1)	580.0(c)(2) first sentence, first clause; applicability expanded.
514.1(e)(2)	515.2, second sentence; 580.0(c)(2), first sentence (after first clause) and second and third sentences.
514.1(e)(3)	550.0(b), third sentence; 550.3(b), second sentence.
514.2	Definitions.
1916 Act	550.2(a).
1984 Act	580.2; 581.1.
Amendment	550.2; 580.10(a), introductory paragraph; combined and applicability expanded.
Assessorial; Assessorial charge; Assessorial charge calculation; ATFI; Availability (period of); Batch filing; "Batch Filing Guide;" Bill of lading.	New—ATFI.
Bulk cargo	580.2; applicability expanded.
Checking	515.6.
Co-loading (foreign commerce).	580.5(d)(14).
Combination rate	New—ATFI.
Commission	550.2; 581.1.
Commodity description; Commodity description number; Commodity index.	New—ATFI.
Commodity rates	550.2; 580.2; modified for ATFI.
Common carrier or carrier and conference (foreign commerce).	580.2; 581.1.
Conformity checks; Consignee.	New—ATFI.
Container	550.5(b)(8)(xv); applicability expanded.
Contract party	581.1.
Controlled common carrier.	580.2.
Data Element Dictionary; Destination Scope.	New—ATFI.
Dockage	515.6.

DERIVATION TABLE FOR PART 514—Continued

[IR Sec. = Third Interim Report and Section Therein]

New section	Old section
Domestic offshore commerce.	New (structure).
Domestic offshore carrier.	550.2.
Domestic offshore tariff; Edit checks; Effective date.	New—ATFI.
Equipment interchange agreement and tariff.	580.5(d)(21); style change.
Essential terms	Style.
Essential terms publication.	581.1.
Expiration date	New—ATFI.
File or filing (of service contracts).	581.1.
File or filing (of tariff matter).	550.2; modified for ATFI.
Filing date; FMC examiner.	New—ATFI.
Foreign commerce	New (structure).
Forest products	580.2.
Free time	515.6; corrected.
Freight forwarder	Style.
General decrease; General increase.	550.2.
General Reference Tariff.	New—ATFI.
Geographic area	581.1.
Governing Tariff	New—ATFI and style.
Handling	515.6.
Harmonized Code; Harmonized System.	New—ATFI.
Heavy lift	515.6; applicability expanded.
In-bulk batch filing; Inland point; Inland rate; Inland rate table; Interactive filing/retrieval; Intermodal Transportation.	New—ATFI.
Joint rates	550.2; 580.2; combined.
Loading and unloading.	515.6.
Local rates	550.2; 580.2; combined.
Location group	New—ATFI.
Loyalty contract (foreign commerce).	580.2.
Non-vessel-operating common carrier (or NVOCC) (foreign commerce).	580.2; 581.1.
Ocean common carrier (foreign commerce).	580.2; 581.1.
Ocean freight broker; Ocean freight forwarder (foreign commerce).	580.2; 581.1.
On-line batch filing	New—ATFI.
Open for public inspection.	580.2; modified for ATFI; applicability expanded.
Open rate (foreign commerce).	580.2.

DERIVATION TABLE FOR PART 514—Continued

[IR Sec. = Third Interim Report and Section Therein]

New section	Old section
Organization name; Organization record; Origin scope; Owner (of tariff material); Page-based tariff.	New—ATFI.
Person	550.2; 580.2; 581.1; combined.
Point of rest	515.6.
Port	550.2; modified for ATFI; applicability expanded; style change.
Port range	581.1.
Port terminal facilities.	515.6.
Post, posted, posting (of tariff matter—domestic offshore commerce).	550.2; modified for ATFI.
Practices	Style.
Project rates	550.2; applicability expanded.
Proportional rates	550.2; 580.2; combined.
Publisher (tariff); Rate; Retrieval.	New—ATFI.
Round trip excursion voyage.	550.2.
Rules (in a tariff); Scope.	New—ATFI.
Service contract	581.1.
Service contract records.	581.1.
Shipment	580.2; 581.1; applicability expanded.
Shipper	580.2; 581.1; applicability expanded.
Shippers' association (foreign commerce).	581.1.
Special case number; Special permission; Specimen bill of lading.	New—ATFI.
Statement of essential terms.	581.1.
Submit or submission (foreign commerce—service contracts).	581.1.
Substituted service	550.2; applicability expanded.
Syntax check; Tape batch filing.	New—ATFI.
Tariff	550.2; 580.2; combined and modified for ATFI.
Tariff amendments	Style.
Tariff filing	580.2; applicability expanded.
Tariff line item (TLI).	New—ATFI.
Tariff matter, tariff material, tariff publication.	550.2; modified for ATFI and structure; applicability expanded.
Tariff of general applicability (foreign commerce—service contracts).	581.1.
Tariff record	New—ATFI.
Terminal services.	515.6.
Terminal storage	515.6.
Termination date	581.7(c).

DERIVATION TABLE FOR PART 514—Continued

[IR Sec. = Third Interim Report and Section Therein]

New section	Old section
Through intermodal transportation; Through rate (domestic offshore commerce).	550.2.
Through rate (foreign commerce).	580.8(a)(1).
Through route (domestic offshore commerce).	550.2.
Through transportation (foreign commerce).	580.8(a)(2).
Thru date	New—ATFI.
Time/volume rate (foreign commerce).	580.12.
TLI; Trade name; Traditional tariff.	New—ATFI.
Transaction set	New—ATFI.
Transshipment (domestic offshore commerce).	550.2.
Usage	515.6.
Validity check	New—ATFI.
Via ports	580.8(b)(2)(ii).
Wharfage;	
Wharf demurrage	515.6.
514.3 Introductory paragraph.	550.1(a) introductory paragraph.
514.3(a)(1)	550.1(a)(8); 580.1(c)(8); combined.
514.3(a)(2)	580.1(e)(1).
514.3(a)(3)	550.1(a)(1); restructured.
514.3(a)(4)	515.3 second clause; restructured.
514.3(a)(5)	550.1(a)(2); restructured.
514.3(a)(6)	550.1(a)(3); restructured.
514.3(a)(7)	Cross-referenced.
514.3(a)(8)	515.3 last excepting clause; restructured.
514.3(b)(1)	515.3 first clause; 580.1(a); 581.3(d); combined and restructured.
514.3(b)(2)	580.1(c)(3); restructured.
514.3(b)(3)	550.1(a)(6); 580.1(c)(7); combined and restructured.
514.3(b)(4)	580.1(d); modified for ATFI.
514.3(c)(1)	580.1(b).
514.3(c)(2)	580.1(c)(1); 580.1(c)(2); 580.1(c)(4); 580.1(c)(5); 580.1(c)(6); restructured.
514.3(d)(1)	550.1(a)(4); 550.1(a)(7).
514.3(d)(2)(i)	550.1(b).
514.3(d)(3)(i)	550.1(c).
514.3(d)(3)(ii)	550.1(a)(5).
514.3(d)(4)(i)	550.1(d).
514.3(e)	New—ATFI.
514.4(a)	550.3(f); 580.3(n); combined and restructured; modified for ATFI.
514.4(b)(1)	New—ATFI.
514.4(b)(2)	550.3(k); 550.6(a) second sentence; 580.3(c); 580.6(k)(1); combined and restructured; applicability expanded.
514.4(b)(3)(i)	550.3(p)(2); applicability expanded.

DERIVATION TABLE FOR PART 514—Continued

[IR Sec. = Third Interim Report and Section Therein]

New section	Old section
514.4(b)(3)(ii)	550.3(p)(1) second sentence; applicability expanded.
514.4(b)(3)(iii)	515.7.
514.4(b)(3)(iv)(A)	580.5(g) introductory paragraph; 580.13(b); restructured; applicability expanded.
514.4(b)(3)(iv)(B)	580.6(k)(2); applicability expanded.
514.4(b)(3)(v)	581.5(a)(2).
514.4(c)(1)	New—based on section 9 of the 1984 Act.
514.4(c)(2)	580.1(e)(2); 580.1(e)(3); modified for ATFI.
514.4(d)(1)	New—ATFI.
514.4(d)(2)	550.3(c); 550.17(d); restructured; modified for ATFI.
514.4(d)(3)	580.3(b); modified for ATFI.
514.4(d)(4)(i)	580.3(k); modified for ATFI.
514.4(d)(4)(ii)	580.3(i); 580.3(j); 580.4(e)(3); modified for ATFI.
514.4(d)(4)(iii)	580.10(a)(3)(ii).
514.4(d)(5)	581.4(c); [IR Sec.9].
514.4(d)(6)	550.17 except (d); 580.15; restructured and combined; modified for ATFI.
514.4(e)(1)	550.3(p)(3); 550.12; 550.10(b)(3); 580.11(a)(1); restructured; combined; modified for ATFI; application extended.
514.4(e)(2)	581.4(b)(2)(iii)(B); modified.
514.7(a)	581.5(a); restructured and clarified; modified for ATFI.
514.7(b)	581.9.
514.7(c)	581.3(d).
514.7(d)	581.3(e).
514.7(e)	581.11.
514.7(f)	561.6; restructured and clarified.
514.7(g)	581.3(a)(1); 581.3(a)(3); modified for ATFI; [IR Sec.14].
514.7(h)	581.4(a); modified for ATFI. [IR Sec.14].
514.7(i)	[Reserved]
514.7(j)	581.8; modified for ATFI.
514.7(k)	581.7(b); modified for ATFI.
514.7(l)	581.5(b); 581.5(c); 581.7(c); combined, restructured and clarified.
514.7(m)	581.10; restructured.
514.8(a)–(h)	New—ATFI; [IR Secs. 18 and 22].
514.8(i)	[Reserved]
514.8(j)	580.5(c)(2)(ii), introductory paragraph; modified for ATFI [IR Sec.13].
514.8(k)	550.3(h); 550.3(o); 580.3(h); 580.3(m); 580.5(a)(12); combined; restructured; modified for ATFI; [IR Sec.19].
514.8(l)	New—ATFI; [IR Sec.17].
514.8(m)–(n)	New—ATFI.

DERIVATION TABLE FOR PART 514—Continued

[IR Sec. = Third Interim Report and Section Therein]

New section	Old section
514.9(a)	550.5(b)(6)(i), introductory paragraph, second sentence; 550.5(b)(6)(ii); 550.10(e), introductory paragraph; 550.10(e)(2); 580.5(c)(7); 580.10(a)(7)(i), introductory paragraph, second sentence; 580.10(a)(7)(ii); modified for ATFI.
514.9(b) (general)	550.5(b)(6)(i); 580.10(a)(7)(i); modified for ATFI.
514.9(b)(1)	550.10(b), introductory paragraph; 580.10(a)(2); 580.10(a)(5); combined and modified for ATFI.
514.9(b)(3)	550.10(b)(4); 580.10(a)(3)(i), introductory paragraph; 580.10(a)(4); combined and modified for ATFI.
514.9(b)(5)	550.10(e)(2); 550.10(b)(3); 580.10(a)(5); combined and modified for ATFI.
514.9(b)(7)	550.10(c); NEW SYMBOL.
514.9(b)(9)	550.3(f); 550.10(b); 580.3(n); 580.10(a)(2); combined and modified for ATFI.
514.9(b)(11)	580.10(a)(3), beginning with exception clause.
514.9(b)(13)	580.1(d); modified for ATFI; NEW SYMBOL.
514.9(b)(16)(i)	550.10(b)(1); 550.10(b)(6); modified for ATFI.
514.9(b)(16)(ii)	580.8(b); modified for ATFI.
514.9(b)(18)(i)	550.10(b), introductory paragraph; modified for ATFI [IR Sec.5].
514.9(b)(18)(ii)	580.10(a)(3)(i); modified for ATFI.
514.9(b)(19)	550.10(f); 580.10(a)(11); modified for ATFI; NEW SYMBOL; [IR Sec.11].
514.9(b)(20)	550.10(b)(5)(i); 580.9(b); modified for ATFI; NEW SYMBOL.
514.9(b)(24)(i)	580.1(e)(1)(iii)–(v); modified for ATFI; NEW SYMBOL.
514.9(b)(24)(ii)	Cross-reference; NEW SYMBOL.
514.9(c)	New—ATFI [IR Sec.10].
514.9(d)	New—ATFI [IR Sec.8].
514.10(a)(1)–(2)	New—ATFI.
514.10(a)(3)	550.4(g); 550.5(a)(9)(i); 580.5(a)(8); Modified for ATFI.
514.10(a)(4)	550.9(a)(9)(ii); 550.5(a)(10); Modified for ATFI.
514.10(a)(5)	New—ATFI.
514.10(b)	New—ATFI; [IR Secs.2–3].
514.10(c)	New—ATFI; [IR Sec.6].
514.10(d)	550.6(i); 550.6(j); 580.6(e); Modified for ATFI; [IR Sec.15].

DERIVATION TABLE FOR PART 514—Continued

[IR Sec. = Third Interim Report and Section Therein]

New section	Old section
514.11	550.4(f); 550.5(a)(1); 550.5(a)(2); 580.5(a)(3); 550.5(a)(5); 550.5(a)(10); 550.5(b)(1); 550.5(b)(2); 550.5(b)(3); 550.5(b)(4); 580.5(a)(1); 580.5(a)(2); 580.5(a)(3); 580.5(a)(4); 580.5(a)(9); 580.5(a)(11); 580.5(c)(2)(i); 580.5(c)(3); 580.5(c)(4); 580.5(d)(24)(ii), first sentence; combined and restructured; modified for ATFI; [IR Secs.2,3,7].
514.12	550.5(a)(8); 550.5(b)(7); 550.14(a); 550.14(b); 550.14(c); 550.20; 580.5(a)(7); 580.5(c)(8); 580.5(g)(1); 580.5(g)(4)(i)-(ii); 580.5(g)(5); 580.13; 580.17; 581.4(b)(1)(ii); 581.4(b)(2)(ii); combined and restructured; modified for ATFI; [IR Sec.16].
514.13	All New—ATFI except the following, which are all restructured and combined, and modified for ATFI: [IR Secs.1,7].
514.13(a)(2)(i)(B)	580.6(h)
514.13(a)(2)(i)(D)	550.6(j); applicability broadened.
514.13(a)(3)(iii)	550.6(k)(l); applicability broadened.
514.13(a)(3)(iv)	550.6(m); 580.6(n)(2).
514.13(a)(3)(v)	580.6(i); applicability broadened.
514.13(a)(4)	550.5(b)(5); 550.6(g), second sentence; 580.5(c)(6), except third and fourth sentences; 580.6(b), second sentence.
514.13(b)(1)(i)	550.6(a); 580.6(b), first sentence; 580.6(k)(1).
514.13(b)(5)-(6)	550.6(g), second sentence; 580.6(b), third sentence.
514.13(b)(10)	580.6(n).
514.13(b)(17)(i)	Except liability clause: 550.5(b)(8)(xi); 580.5(d)(12).
514.13(b)(17)(iii)	580.5(d)(17).
514.13(b)(17)(iv)(A)	550.6(e).
514.13(b)(17)(iv)(B)	550.5(b)(8)(xiv), except manufacturer's models.
514.13(b)(18)	550.6(b); 580.6(a).
514.13(b)(19)(i)	580.12(a); 580.12(b)(1)-(3).
514.13(b)(19)(ii)	580.6(i); 580.6(m).
514.13(b)(22)	550.6(c); 550.6(d); 580.6(c); 580.6(d).
514.13(c)	New—ATFI.
514.14(a)	New—structure of rule.
514.14(b), introductory paragraph.	580.3(o); modified for ATFI.
514.14(b)(1)	580.5(d)(13)(i); 580.8(b), introductory paragraph; modified for ATFI.
514.14(b)(2)	550.8(a)(2); 580.5(d)(13)(ii); 580.8(b)(2); modified for ATFI.
514.14(b)(3)	550.8(a)(1); 580.8(c); modified for ATFI.
514.14(b)(4)	550.8(a)(3); 580.5(d)(13)(ii); 580.8(b)(1); modified for ATFI.
514.14(b)(5)(i)	550.8(a)(4); 580.8(b)(3); modified for ATFI.

DERIVATION TABLE FOR PART 514—Continued

[IR Sec. = Third Interim Report and Section Therein]

New section	Old section
514.14(b) (5)(ii)(A)	550.8(c).
514.14(b) (5)(ii)(B)	550.8(b); modified for ATFI.
514.14(b) (5)(ii)(C)	550.8(a)(5); modified for ATFI.
514.14(b)(6)	580.5(d)(13)(iii).
514.14(c)(1)-(5)	New—ATFI (example).
514.14(c)(6)	580.8(b)(2); modified for ATFI.
514.14(c)(7)	580.6(p); modified for ATFI.
514.14(c)(8)	New—ATFI.
514.15(a)	550.5(b)(9); 550.5(b)(10); 580.5(c)(10); 580.5(e); 580.5(f); modified for ATFI.
514.15(b) introductory paragraph.	550.5(b)(8); 580.5(d); combined and modified for ATFI (as well as all subparagraphs, below, for which both old parts 550 and 580 are listed as sources).
514.15(b)(1)	580.5(d)(1); applicability broadened; [IR Secs.2,3].
514.15(b)(2)	550.5(b)(8)(i); 580.5(c)(5); 580.5(d)(2).
514.15(b)(3)	550.5(b)(8)(ii); 580.5(d)(3).
514.15(b)(4)	550.5(b)(8)(iii); 580.5(d)(4).
514.15(b)(5)	550.5(b)(8)(iv); 580.5(d)(5).
514.15(b)(6)	550.5(b)(8)(v); 580.5(d)(6).
514.15(b)(7)	550.5(b)(8)(vi); 580. 5(d)(7).
514.15(b)(8)	550.5(b)(8)(vii); 580.5(d)(8); [IR Sec.12].
514.15(b)(9)	550.5(b)(8)(vii); 580.5(d)(9).
514.15(b)(10)	550.5(b)(8)(ix); 580.5(d)(10); 580.6(i).
514.15(b)(11)	550.5(b)(8)(x); 580.5(d)(11).
514.15(b)(12)	550.5(b)(8)(xi); 580.5(d)(12).
514.15(b)(13)	550.5(b)(8)(xii); 580.5(d)(13); applicability expanded.
514.15(b)(14)	580.5(d)(14).
514.15(b)(15)	580.5(d)(15).
514.15(b)(16)	550.5(b)(8)(xiii); 580.5(d)(16); 580.13(c).
514.15(b)(17)	580.5(d)(17).
514.15(b)(18)	580.5(d)(18).
514.15(b)(19)	580.5(d)(19).
514.15(b)(20)	550.5(b)(8)(xvi); 580.5(d)(20).
514.15(b)(21)	550.5(b)(8)(xvii); 580.5(d)(21).
514.15(b)(22)	550.5(b)(8)(xiv); manufacturers' models.
514.15(b)(23)	550.9; 550.10(b)(5); 550.10(b)(6); 580.9(c); combined and restructured.
514.15(b)(24)	580.5(d)(24).
514.15(b)(25)	580.5(d)(25).
514.15(b)(26)	580.12; executed provision deleted.
514.15(b)(27)	580.16.
514.15(b)(28)	New.
514.15(b)(29)	New—ATFI.
514.15(b)(30)	580.5(a)(12); applicability broadened.
514.15(b)(31)	550.10(b)(7); 550.15.
514.15(c)	550.5(b)(9); 580.5(e).
514.17(a)	New; explanatory.
514.17(b)	581.3(b); 581.4(b)(2) except 581.4(b)(2)(iii)(B); modified for ATFI.
514.17(c)(1)-(2)	581.3(a)(2)(i)-(ii); 581.5(a)(1)-(2); modified for ATFI.
514.17(d)(1)	New; sample ATFI screen.
514.17(d)(2)	581.4(b)(1)(iii); modified for ATFI.
514.17(d)(3)	581.4(b)(1)(iv); 581.6(b)(1); modified for ATFI.
514.17(d)(4)	581.5(a)(3)(i); modified for ATFI.

DERIVATION TABLE FOR PART 514—Continued

[IR Sec. = Third Interim Report and Section Therein]

New section	Old section
514.17(d)(5)	Cross reference; modified for ATFI.
514.17(d)(6)	Cross reference; modified for ATFI.
514.17(d)(7)	581.5(a)(3)(iii); modified for ATFI.
514.17(d)(8)(i)-(ii)	581.5(a)(3)(ii); modified for ATFI; [IR Sec.14].
514.17(d)(8)(iii)	581.5(a)(3)(v); modified for ATFI.
514.17(d)(8)(iv)	581.5(a)(3)(vi); modified for ATFI.
514.17(d)(8)(v)	581.5(a)(3)(vii); modified for ATFI.
514.17(d)(8)(vi)	581.5(a)(3)(viii); modified for ATFI.
514.17(d)(8)(vii)	581.5(a)(3)(i); modified for ATFI.
514.17(d)(9)	581.5(a)(3) introductory paragraph; modified for ATFI.
514.18	550.10(f); 550.18; 580.10(a)(11); 580.15; combined and restructured; modified for ATFI.
514.19(a)	550.13; modified for ATFI.
514.19(b)	580.11(g); modified for ATFI.
514.19(c)-(d)	New—ATFI.
514.20	New—ATFI.
514.21(a)	502.69.
514.21(b)-(c)	New—ATFI.
514.21(d)	503.43(c).
514.21(e)	New—ATFI.
514.21(f)	550.18(a)(3); 580.15(b); fee increased.
514.21(g)	New—ATFI.
514.21(h)	503 Subpart E.
514.21(i)	[Reserved]
514.21(j)	New—ATFI.

Although the Commission is not subject to the requirements of Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or of the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is estimated that the initial investment in basic equipment needed for the transition from paper to electronic filing and retrieval of tariff data will cost no more than $1,000, for a suitable off-the-shelf terminal, modem

and printer, which many offices in the private sector already use for other business purposes. To this will be added reasonable user charges for services provided by the Commission. The essential electronic filing and retrieval functions that can be performed with this equipment are comparable to basic, current paper tasks of formatting a simple tariff and obtaining tariff material from the Commission's Tariff Control Center. Those shipping industry firms that desire or require a greater volume of data, with or without more sophisticated services tailored to their needs, will be voluntarily making a larger investment proportional to these needs. This is similar to what these firms do today under the paper system, and, for this purpose, many such firms will continue to utilize the value-added services of private-sector third-party vendors, with which ATFI has been designed not to compete. After the start-up investment, it is anticipated that annual costs of electronic tariff filing and retrieval will be less than those for filing and retrieval of the same volume of tariff data in paper under the current system. Accordingly, the Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small government jurisdictions.

The collection of information requirements contained in this proposed rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980, as amended. Initially during the first year of full operation, public reporting burden for this collection of information is estimated to be approximately 19 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information. For subsequent years, after tariffs have been converted to the electronic system and filers are more familiar with ATFI, the burden will be substantially reduced, probably below what it is currently under the paper system. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, Washington, DC 20503.

List of Subjects in 46 CFR Part 514

Barges, Cargo, Cargo vessels, Exports, Fees and user charges, Freight, Harbors, Imports, Incorporation by reference, Maritime carriers, Motor carriers, Ports, Rates and fares, Reporting and record keeping requirements, Surety bonds, Trucks, Water carriers, Waterfront facilities, Water transportation.

By the Commission.

Ronald D. Murphy,
Assistant Secretary.

For the reasons set forth in the preamble, and pursuant to 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1705, 1707–1709, 1712, 1714–1716, 1718 and 1722; and section 2(b) of Public Law 101–92, the Federal Maritime Commission proposes to amend title 46, chapter IV, Code of Federal Regulations, as follows:

1. The title of subchapter B is revised to read as follows:

SUBCHAPTER B—REGULATIONS AFFECTING MARITIME CARRIERS, OCEAN FREIGHT FORWARDERS, MARINE TERMINAL OPERATIONS, PASSENGER VESSELS, TARIFFS AND SERVICE CONTRACTS

2. A new part 514 is added to subchapter B to read:

PART 514—TARIFFS AND SERVICE CONTRACTS

Subpart A—General Provisions

Sec.
514.1 Scope, purpose, requirements and penalties.
514.2 Definitions.
514.3 Exemptions and exclusions.
514.4 Content, filing and cancelation of tariff material; general.
514.5 [Reserved]
514.6 [Reserved]

Subpart B—Service Contracts

514.7 Service contracts in foreign commerce.

Subpart C—Form, Content and Use of Tariff Data

514.8 Electronic filing.
514.9 Filing/Amendment codes and required notice periods.
514.10 Other items used throughout ATFI.
514.11 Organization and tariff records; tariff scope.
514.12 Governing and general reference tariffs.
514.13 Commodities and tariff line items ("TLIs").
514.14 Intermodal and transshipment services; inland rate tables.
514.15 Tariff Rules.
514.16 [Reserved]
514.17 Essential terms of service contracts in foreign commerce.
514.18 Special permission.
514.19 Suspension of tariff matter.
514.20 Retrieval.
514.21 User charges.
514.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act. [Reserved]

Exhibit 1 to Part 514—ATFI User Registration Form

Authority: 5 U.S.C 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1705, 1707–1709, 1712, 1714–1716, 1718 and 1722; and sec. 2(b) of Pub.L. 101–92, 103 Stat. 601.

Subpart A—General Provisions

§ 514.1 Scope, purpose, requirements and penalties.

(a) *Scope.* The regulations of this part govern:

(1) The publication and filing of tariffs, as well as service contracts and their essential terms, covering the transportation of property performed by common carriers in the foreign commerce of the United States and by combinations of such common carriers, including through transportation offered in conjunction with one or more carriers not otherwise subject to the Shipping Act of 1984 (46 U.S.C. app. 1702, et seq.).

(2) The publication, filing, and posting of tariffs for the transportation of property or passengers performed by common carriers by water in interstate commerce which are subject to the Shipping Act, 1916, as amended (46 U.S.C. app. 801, et seq.), including through transportation offered in conjunction with one or more common carriers not subject to said Shipping Act.

(3) The filing of terminal tariffs by persons engaged in carrying on the business of furnishing wharfage, dock, warehouse or other terminal facilities within the United States or a commonwealth, territory, or possession thereof, in connection with a common carrier by water in the foreign or domestic offshore commerce of the United States.

(4) The filing of tariffs by terminal barge operators in Pacific Slope States in the foreign and domestic commerce of the United States.

(5) The formatting of tariff materials for electronic filing, processing and retrieval.

(b) *Purpose.* The tariff format and content requirements of this part reflect the Commission's responsibilities in identifying and preventing unreasonable preference or prejudice and unjust discrimination pursuant to section 10 of

the Shipping Act of 1984. The purposes of this part are also to enable the Commission to:

(1) Discharge its responsibilities under section 17 of the Shipping Act, 1916 and section 10 of the Shipping Act of 1984, by keeping informed of practices, rates and charges related thereto, instituted and to be instituted by marine terminals, and by keeping the public informed of such practices.

(2) Determine, through the use of information obtained under this part, the propriety of the level of rates, fares, charges, and practices demanded, charged, collected or observed by carriers in the domestic offshore commerce of the United States under the Shipping Act, 1916, as amended by the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843, et seq.).

(3) Facilitate, by electronic means, the filing, processing and retrieval of tariff materials to better promote the waterborne commerce of the United States.

(c) *Basic requirements.* Unless exempted or excluded under § 514.3, and as augmented by § 514.8(k)(1), the following are the basic requirements under this part:

(1) *Foreign commerce of the United States.* (i) Section 8 of the Shipping Act of 1984 requires common carriers and conferences of such common carriers to file with the Commission and keep open to public inspection, tariffs showing all rates, charges, classifications, Tariff Rules and practices for transportation between U.S. and foreign ports and between points on any through route which is established. These regulations implement this requirement and, in addition, the requirements of sections 9, 10 and 16 of the Shipping Act of 1984.

(ii) Service contracts and their essential terms are also required to be filed by the 1984 Act and shall apply only to transportation of cargo moving from, to or through a United States port in the foreign commerce of the United States.

(iii) *Anti-rebate certification.* (A) An anti-rebating certification shall be filed in paper format, as prescribed by part 582 of this chapter, by every common carrier in foreign commerce as a prerequisite to obtaining password authority to file its initial tariff under this part, and on each succeeding December 31. Except for the initial certification, the certification filed on each succeeding December 31 shall be valid for the calendar year following the December 31 filing date.

(B) Failure of a common carrier to file an anti-rebate certification before filing initial tariffs, as required by this part and part 582 of this chapter, shall result in withholding or suspension of any filing authorization and rejection of that carrier's proposed tariff(s).

(C) Any common carrier who fails to file an annual anti-rebate certification as required by part 582 of this chapter will be notified by **Federal Register** publication and by certified mail that if, within forty-five (45) days from the date the certified notice is mailed, the common carrier does not either establish that the required anti-rebate certification was filed in accordance with this part and part 582 of this chapter, or file the required anti-rebate certification, its tariff(s) will be canceled and attempted filings rejected.

(D) In the event common carrier rates are published in one or more conference tariffs, the name of every common carrier who did not file an anti-rebate certification will be stricken from the list of carriers participating in those conference tariffs.

(E) The tariff(s) of any common carrier who files an anti-rebate certification after December 31 but before the end of the forty-five (45) days' notice period will not be canceled; however, the common carrier will be subject to civil penalties as provided in parts 505 and 582 of this chapter. After the forty-five (45) days, any common carrier that does not have an anti-rebate certification on file with the Commission will be notified by **Federal Register** publication and certified mail, return receipt requested, that its tariff(s) have been canceled and/or its name has been stricken from conference tariff(s).

(2) *Domestic offshore commerce of the United States under the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933.* (i) Every domestic offshore carrier shall file with the Commission and keep open to public inspection, tariffs showing its actual rates, fares and charges for or in connection with transportation between all points on its own route, and all points on any through route established in conjunction with other carriers. Such tariffs shall plainly show the places between which freight or passengers will be carried and shall contain any classification of freight and passenger accommodations affecting or determining the rates applicable to such transportation and shall state separately each terminal or other charge, privilege, or facility granted or allowed to shippers or passengers and any Tariff Rules or regulations which in anywise change, affect, or determine any part of the total rates, fares or charges assessed or the value of service rendered to consignors, consignees or passengers.

(ii) Only tariffs of persons engaged in common carriage by water may be filed. Common carriers subject to the Shipping Act, 1916, are those vessel operating and non-vessel-operating carriers providing transportation by water between:

(A) Any of the 48 contiguous states or the District of Columbia and Alaska or Hawaii;

(B) Any state or the District of Columbia and any territory, commonwealth, possession or district (excluding the District of Columbia);

(C) Alaska and Hawaii;

(D) Any territory, commonwealth, possession or district (excluding the District of Columbia) and any other such territory, commonwealth, possession, or district; and

(E) Places in the same district, territory, commonwealth or possession (excluding the District of Columbia), and which are not solely engaged in transportation subject to the jurisdiction of the Interstate Commerce Commission under 49 U.S.C. Chapter 105.

(3) *Both foreign and domestic offshore commerce*—(i) *Terminal operators.* (A) Every person carrying on the business of furnishing wharfage, dock, warehouse, or other terminal facilities as described in paragraph (a)(3) of this section, including, but not limited to terminals owned or operated by States and their political subdivisions; railroads who perform port terminal services not covered by their line haul rates; common carriers who perform port terminal services; and warehousemen who operate port terminal facilities, shall file, and shall keep open for inspection at all its places of business, a schedule or tariff showing all its rates, charges, Tariff Rules, and regulations relating to or connected with the receiving, handling, storing, and/or delivering of property at its terminal facilities,

(B) Every tariff or tariff change shall be filed on or before its effective date, except as required by Commission Order or by agreements approved pursuant to section 15 of the Shipping Act, 1916 and/or effective under section 6 of the Shipping Act of 1984, and be kept open for public inspection as provided in paragraph (c)(3)(i)(A) of this section.

(C) Persons who file tariffs pursuant to requirements of Commission Orders or agreements, approved under section 15 of the Shipping Act, 1916 and/or effective under section 6 of the Shipping Act of 1984, may not be relieved of such requirements by this part.

(ii) *Terminal barge operators*—(A) *Persons who must file.* Terminal barge operators moving containers or containerized cargo by barge between points in the Continental United States shall be subject to the provisions of the

Shipping Act, 1916 and/or the Shipping Act of 1984 and shall file a schedule of their rates, charges and services solely with the Federal Maritime Commission where:

(1) The cargo is moving between a point in a foreign country or a noncontiguous State, territory, or possession and a point in the United States.

(2) The transportation by barge between points in the United States is furnished by a terminal operator as a service substitute in lieu of a direct vessel call by the common carrier by water transporting the containers or containerized cargo under a through bill of lading.

(3) Such terminal operator is a Pacific Slope State municipality, or other public body or agency subject to the jurisdiction of the Federal Maritime Commission, and the only one furnishing the particular circumscribed barge service on January 2, 1975.

(4) Such terminal operator is in compliance with the rules and regulations of the Federal Maritime Commission for the operation of such barge service.

(B) *Tariff filing requirements. (1)* Terminal barge operators subject to this part shall comply with the tariff filing requirements of this part with respect to the publication of rates, charges and services for cargo moving in the foreign and/or domestic offshore commerce of the United States.

(2) Terminal barge operators, to the extent they may be exempted from any tariff filing form requirements of this part with respect to their operations as water carriers carrying cargo in the domestic offshore trades, shall comply with all other required regulations, where applicable.

(3) Tariff(s) filed pursuant to paragraph (c)(3)(ii)(B)*(1)* of this section shall specifically provide that the rates charged are based upon factors normally considered by a regular commercial operator in the same service.

(4) *Electronic filing.* All tariffs filed under this part shall be properly formatted as provided in this part and in the ATFI "Batch Filing Guide."

(d) *Rejection of tariff data.* (1) Acceptance of tariff matter does not establish the legality of the rates and practices described therein. The mere filing of a tariff does not excuse the tariff owner or publisher from the obligations of the 1916, 1933 or 1984 Acts or this chapter, regardless of whether these obligations preceded or followed the filing of the tariff in question.

(2) Any tariff matter submitted for filing, including service contracts and their essential terms, which fails in any respect to conform with the applicable shipping statutes, with the provisions of this part, or with a Commission Order, is subject to rejection or partial rejection after filing. Cause for rejection includes failure of the filing domestic offshore carrier to comply with the provisions of Rule 67 of the Commission's Rules of Practice and Procedure (46 CFR 502.67) and/or part 552 of this chapter.

(3) Notices of rejection, with reasons therefor, will be made available to filers through electronic mail and, if not accessed by the filer within a certain period of time, will be sent by regular U.S. mail. For service contracts and/or essential terms, the Commission may also notify the filing party of the Commission's intent to reject within 20 days of filing. See § 514.7(g).

(4) Rejected tariff matter is void and its use is unlawful.

(5) After rejection, the filer is responsible for putting its tariff in order. See § 514.9(b)(19)(iv).

(6) The "Status" function on many ATFI screens displays a pop-up window that shows the status of a filed tariff item, including a code that identifies whether it was accepted or rejected, a description of the code, and any comments entered by an FMC Examiner regarding a rejected item.

(e) *Penalties; suspension of tariff material.* (1) Operating without an effective tariff on file with the Commission or charging rates not in conformance with such a tariff is unlawful.

(2) Foreign commerce. Pursuant to section 13 of the Shipping Act of 1984, operating without an effective tariff on file or charging rates not in conformance with such a tariff is subject to a civil penalty of not more than $5,000 for each violation unless the violation was willfully and knowingly committed, in which case the amount of civil penalty may not exceed $25,000 for each violation. Each day of a continuing violation constitutes a separate offense. Additionally, the Commission may suspend any or all tariffs of the common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member, for a period not to exceed 12 months. See § 514.19.

(3) Domestic offshore commerce. (i) The Commission may at any time direct the cancelation of tariff matter which does not conform to the 1916 Act or this part. See § 514.19.

(ii) Violations of the provisions of this part are subject to a civil penalty of not more than $1,000 for each day such violation continues.

§ 514.2 Definitions.

The following definitions (in alphabetical order) shall apply to the regulations of this part and to all tariffs and service contracts filed pursuant to them, unless otherwise indicated by the context of this part.

1916 Act means the Shipping Act, 1916, as amended (including the Intercoastal Shipping Act, 1933, and the Transportation Act of 1940).

1984 Act means the Shipping Act of 1984.

Amendment means any change, alteration, correction or modification of an existing tariff.

Assessorial (accessorial) means a special service or condition, usually described in a commodity description, TLI, or Tariff Rule, for which a charge may be added to the basic ocean freight rate. See § 514.10(d).

Assessorial charge means the amount determined for an assessorial service(s) or condition(s) that is (are) added to the basic ocean freight rate. See § 514.10(d).

Assessorial charge calculation means an algorithmic representation of the conditions and mathematical steps necessary to calculate an assessorial charge.

Associative check means an automated comparative check of data filed with ATFI to check for logical conformity with Commission tariff filing rules and previously filed tariff matter. See § 514.8(n)(1)(iii).

ATFI means the Commission's Automated Tariff Filing and Information System, a computer-based system for creating, filing, processing and retrieving ocean freight and terminal tariffs and the essential terms of service contracts.

Availability (period of) means the process of offering essential terms of a service contract to all similarly situated shippers who can accept them for the purpose of entering their own service contract (for a period of 30 days or more). See § 514.17(d)(3).

Batch filing means the process by which a tariff filer can transmit to the Commission tariff matter which has been created on the filer's own computer using FMC-certified software. (Also see "on-line batch filing," "in-bulk batch filing" and "tape batch filing"). See § 514.8 (c), (d)(3), and (l).

Batch Filing Guide means an ATFI user document available in "Pike and Fischer Shipping Regulation," and upon request from the Commission, which defines the procedures and technical requirements for batch filing. See § 514.8(d)(3).

Bill of lading means a document produced by a carrier which is the basic transportation contract between shipper

and carrier and which details, among other things the commodities transported and the price and type of transportation services provided by the carrier. See § 514.15(b)(8).

BTCL means the Commission's Bureau of Tariffs, Certification and Licensing.

Bulk cargo means cargo that is loaded and carried in bulk without mark or count, in a loose unpackaged form, having homogeneous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and is, therefore, subject to the tariff filing requirements of this part.

Checking means the service of counting and checking cargo against appropriate documents for the account of the cargo or the vessel, or other person requesting same. See "terminal services." See § 514.15(b)(23).

Chemical parcel tanker. See "common carrier."

Co-loading (foreign commerce) means the combining of cargo, in the import or export commerce of the United States, by two or more NVOCCs for tendering to an ocean carrier under the name of one or more of the NVOCCs. See § 514.15(b)(14).

Combination rate means a freight rate to or from an inland point computed by the addition of charges from a TLI covering a port combined with an inland freight charge to or from the inland point. See also: "through rate." See § 514.14.

Commission means the Federal Maritime Commission.

Commodity description means a comprehensive description of a commodity listed in a tariff including a brief definition of the commodity, any applicable assessorial charges, and the commodity index entries by which the commodity is referenced. See § 514.13(a).

Commodity description number means a 10-digit number used to identify a commodity description. See § 514.13(a).

Commodity index means an index of the commodity descriptions contained in a tariff. See § 514.13(a).

Commodity rates means rates for shipping to or from specific locations a commodity or commodities specifically named or described in the tariff in which the rate or rates are published. See § 514.13(a).

Common carrier or carrier (foreign commerce) means a person holding itself out to the general public to provide transportation by water of cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker.

As used in this paragraph, "chemical parcel-tanker" means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination, and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

Conference means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff. The term shall also include any association of ocean common carriers which is permitted, pursuant to an effective agreement, to fix rates and to enter into service contracts, but the term does not include a joint service, consortium, pooling, sailing or transshipment agreement.

Conformity checks means all types of system checks to determine compliance with the criteria of syntax checks (data form and format), validity checks (reference tables' entries), and associative checks.

Consignee means the recipient of cargo from a shipper; the person to whom a transported commodity is to be delivered.

Container means a demountable, reusable freight carrying unit transported on ocean-going vessels without wheels attached.

Contract party means any party signing a service contract as a common carrier, conference, shipper or shippers' association. See §§ 514.7 and 514.17.

Controlled common carrier means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by the government under whose registry the vessels of the common carrier operate; ownership or control by a government shall be deemed to exist with respect to any common carrier if:

(1) A majority portion of the interest in the common carrier is owned or controlled in any manner by that government, by any agency thereof, or by any public or private person controlled by that government; or

(2) That government has the right to appoint or disapprove the appointment of a majority of the directors, the chief operating officer or the chief executive officer of the common carrier.

See §§ 514.3(a)(2); 514.3(b); 514.4(c); 514.9(b); and 514.13(b)(7).

Data Element Dictionary (DED) means a list of the data fields and the values, terms, and expressions allowable for each field. The ATFI-specific Data Element Dictionary is a section in the ATFI "Batch Filing Guide." See § 514.8(d)(3).

Destination scope means a location group in a tariff detailing the allowable destinations for TLIs defined in that tariff. See §§ 514.11(b)(10) and 514.13(b).

Dockage means the charge assessed against a vessel for berthing at a wharf, pier, bulkhead structure, or bank or for mooring to a vessel so berthed. See also "terminal services."

Domestic offshore carrier means a common carrier by water in interstate commerce as defined by section 1 of the 1916 Act.

Domestic offshore commerce means commerce that may be engaged in by domestic offshore carriers. See § 514.1(c)(2)(ii).

Domestic offshore tariff means a tariff of port to port rates for transporting in domestic offshore commerce.

Edit checks. See "conformity checks."

Effective date means the date (12:01 a.m.) upon which a filed tariff or tariff element is scheduled to go into effect by the filer. See §§ 514.9(a) and 514.10(a)(3).

Equipment interchange agreement means a sample agreement which includes the general terms and conditions affecting cost (e.g., maintenance and repair requirements, insurance obligations, pickup or drop off charges and services such as tracing and replenishing fuel or refrigerant for reefer containers) that govern the use of carrier-provided equipment, including cargo containers, trailers and chassis. It also includes the standard free time allowed, and detention or similar charges assessed. See §§ 514.3(a)(1) and 514.15(b)(21).

Equipment interchange Tariff Rule or *Equipment interchange tariff* means either a Tariff Rule or general reference tariff which contains the terms and conditions, including standard free time and charges, governing the use of carrier equipment, and may incorporate an equipment interchange agreement and

the filer's exceptions thereto. See §§ 514.12(c)(3) and 514.15(b)(21).

Essential terms. See "statement of essential terms."

Essential terms publication means the single publication which is maintained by each carrier or conference for service contract(s) and which contains statements of essential terms for every such contract. See § 514.17(b).

Expiration date means the last day, after which the entire tariff or tariff element (e.g., TLI) is no longer in effect. See "thru date" and § 514.10(a).

File or filing (of service contracts) means actual receipt at the Commission's Washington, DC offices. See § 514.7.

File or filing (of tariff matter) means the electronic entering of tariff matter into the ATFI computer after receipt by electronic means or physical delivery of magnetic tape(s). See § 514.8(c).

Filing date (automatically established by the ATFI system) means the date any tariff matter is processed by and entered in ATFI. See § 514.10(a)(2).

FMC examiner means an employee of the Commission who reviews tariffs to ensure that they conform to the shipping statutes and the regulations set by the Commission.

Foreign commerce means that commerce under the jurisdiction of the 1984 Act.

Forest products means forest products in an unfinished or semifinished state that require special handling moving in lot sizes too large for a container, including, but not limited to, lumber in bundles, rough timber, ties, poles, piling, laminated beams, bundled siding, bundled plywood, bundled core stock or veneers, bundled particle or fiber boards, bundled hardwood, wood pulp in rolls, wood pulp in unitized bales, paper board in rolls and paper in rolls. See §§ 514.3(b)(1) and 514.7(c).

Free time means the specified period during which cargo may occupy space assigned to it on terminal property free of wharf demurrage or terminal storage charges immediately prior to the loading or subsequent to the discharge of such cargo on or off the vessel. See "terminal services" and § 514.15(b)(23).

Freight forwarder. See "ocean freight forwarder."

General decrease (domestic offshore commerce) means any change in rates, fares, or charges which will:

(1) Result in a decrease in not less than 50 percent of the total rate, fare, or charge items in the tariffs per trade of any carrier; and

(2) Directly result in a decrease in gross revenues of said carrier for the particular trade of not less than 3 percent.

See § 514.9(b)(7).

General increase (domestic offshore commerce) means any change in rates, fares, or charges which will:

(1) Result in an increase in not less than 50 percent of the total rate, fare, or charge items in the tariffs per trade of any carrier; and

(2) Directly result in an increase in gross revenues of said carrier for the particular trade of not less than 3 percent.

See § 514.9(b)(7).

General Reference Tariff means a tariff or publication which is cross-referenced by an electronically-filed tariff for provisions which do not affect rates. It may be filed in paper format. See § 514.12(b).

Geographic area means the general location from which and/or to which cargo subject to a service contract will move in through service. See § 514.17.

Governing Tariff means a tariff which contains information that is cross-referenced by, and/or incorporated by reference in, another governed tariff. It may affect the rates in the governed tariff and must be electronically filed. See § 514.12(a).

Handling means the service of physically moving cargo between point of rest and any place on the terminal facility, other than the end of ship's tackle. See "terminal services" and § 514.15(b)(23).

Harmonized Code means the coding requirements of the Harmonized System. See § 514.13(a).

Harmonized System means the "International Convention on the Harmonized Commodity Description and Coding System," Brussels, Belgium, 14 June 1983. See § 514.13(a).

Heavy lift means the service of providing heavy lift cranes and equipment for lifting cargo. See "terminal services" and § 514.15 (b)(4) and (b)(23).

In-bulk batch filing means batch filing by tariff publishers using the ATFI transaction sets to create files on magnetic tape for physical delivery to the Commission's ATFI Computer Center. Also referred to as tape batch filing. See § 514.8(c)(3).

Inland point means any country, state, province, city, ZIP code, or ZIP code range which lies beyond port terminal areas. (A city may share the name of a port: the immediate ship-side and terminal area is the port, but the rest of the city is considered an inland point.) See § 514.14.

Inland rate means rate specified from/to an ocean port to/from an inland point, for specified modes of overland transportation. See § 514.14.

Inland rate table means a structured matrix of geographic inland locations (points, ZIP code ranges, etc.) on one axis and transportation modes (truck, rail, etc.) on the other axis, with the inland rates specified at the matrix row and column intersections. See § 514.14.

Interactive filing means the process by which a tariff filer accesses the ATFI system via dial-up, using telecommunications links, a modem and terminal, and interacts with the system on a transaction by transaction basis to retrieve its own tariff information, create tariff filings, and verify previous filings. See § 514.8(c)(1).

Interactive retrieval means the process by which any member of the public accesses the ATFI system via dial-up connection, using telecommunications links, a modem and a terminal, and interacts with the system on a transaction-by-transaction basis to retrieve tariff matter of carriers, conferences and terminal operators which has been filed in the ATFI database. See § 514.20.

Intermodal transportation means continuous transportation involving more than one mode of service, e.g., ship, rail, motor, air, for pickup and/or delivery at an inland point beyond the area of the port at which a vessel calls. Intermodal transportation includes through transportation (at through rates) and transportation on through routes using combination rates. See § 514.14.

Joint rates means rates or charges established by two or more common carriers for ocean transportation over the combined routes of such common carriers. See § 514.14.

Loading and *unloading* means the service of loading or unloading cargo between any place on the terminal and railroad cars, trucks, lighters or barges or any other means of conveyance to or from the terminal facility. See "terminal services" and § 514.15(b)(23).

Local rates means rates or charges for transportation over the route of a single common carrier (or any one common carrier participating in a conference tariff), the application of which is not contingent upon a prior or subsequent movement. See § 514.14.

Location group means a logical collection of geographic points, ports, states, provinces, countries, or combinations thereof, which is primarily used to identify, by location group name, a group that may represent tariff origin and/or destination scope and TLI origin and/or destination. See §§ 514.10(b) and 514.11(b)(10).

Loyalty contract (foreign commerce) means a contract with an ocean common carrier or conference, other

than a service contract or contract based upon time-volume rates, by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or conference. See § 514.15(b)(27).

Non-vessel-operating common carrier (or NVOCC) (foreign commerce) means a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier.

Ocean common carrier (foreign commerce) means a vessel-operating common carrier; but the term does not include one engaged in ocean transportation by ferry boat or ocean tramp.

Ocean freight forwarder (foreign commerce) means a person in the United States that:

(1) Dispatches shipments from the United States via common carriers and books or otherwise arranges space for those shipments on behalf of shippers; and

(2) Processes the documentation or performs related activities incident to those shipments.

On-line batch filing means the process by which a filer transmits tariff information, properly formatted in accordance with published ATFI transaction set formats, to the ATFI system as a "batch" of transactions via dial-up telecommunications links from its own computer. See § 514.8(c)(2).

Open for public inspection means the maintenance, in electronic or paper form, of a complete and current set of the tariffs used by a common carrier, conference or terminal operator, or to which it is a party, in each of its offices and those of its agent in every city where it transacts business involving such tariffs. See § 514.8(k).

Open rate (foreign commerce) means a rate on a specified commodity or commodities over which a conference relinquishes or suspends its ratemaking authority, in whole or in part, thereby permitting each individual ocean common carrier member of the conference to fix its own rates on such commodity or commodities. See §§ 514.13(b)(19) and 514.15(b)(15).

Organization name means an entity's name on file with the Commission and for which the Commission assigns an organization number. See § 514.11(a).

Organization record means information regarding an entity, including its name, address, organization number, carrier type, and the filing and effective dates of the organization record. See § 514.11(a).

Origin scope means a location group defining the geographic range of cargo origins covered by a tariff. See §§ 514.11(b)(10) and 514.13(b).

Owner (of tariff material) means the carrier, conference or terminal establishing the rates and charges in tariff material and on whose behalf the tariff material is filed. See "publisher (tariff)."

Page-based tariff means the traditional type of tariff in which rates are listed on the pages of a paper document. See § 514.8(k)(2).

Person includes individuals, firms, partnerships, associations, companies, corporations, joint stock associations, trustees, receivers, agents, assignees and personal representatives.

Point of rest means that area on the terminal facility which is assigned for the receipt of inbound cargo from the ship and from which inbound cargo may be delivered to the consignee, and that area which is assigned for the receipt of outbound cargo from shippers for vessel loading. See § 514.15(b)(23).

Port means a place at which a common carrier originates or terminates (by transshipment or otherwise) its actual ocean carriage of cargo or passengers as to any particular transportation movement. See §§ 514.14 and 514.15(b)(23).

Port range means those ports in the country of loading or unloading of service contract cargo that are regularly served by the contracting carrier or conference, as specified in its tariff of general applicability, even if the contract itself contemplates use of but a single port within that range. See §§ 514.7 and 514.17.

Port terminal facilities means one or more structures comprising a terminal unit, which include, but are not limited to wharves, warehouses, covered and/or open storage spaces, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers in the interchange of same between land and water carriers or between two water carriers. See § 514.15(b)(23).

Post, posted, posting (of tariff matter—domestic offshore commerce) means the maintenance of a complete, up-to-date tariff, in electronic or paper form, at local and general offices of the carriers party to the tariff under conditions assuring its availability for inspection by members of the public. See § 514.8(k).

Practices. See "tariff."

Project rates means rates applicable to the transportation of materials and equipment to be employed in the construction or one-time development of a named facility used for a major governmental, charitable, manufacturing, resource exploitation, public utility or public service purpose, and also including disaster relief projects. Such construction or development must be undertaken by either the shipper or consignee named on the bill of lading and none of the materials or equipment covered may be transported for the purpose of resale or other commercial distribution. See § 514.13(a)(3)(iv).

Proportional rates means rates or charges assessed by a common carrier for transportation services, the application of which is conditioned upon a prior or subsequent movement. See § 514.14.

Publisher (tariff) means an organization authorized to file or amend tariff information.

Rate means a quoted price for providing a specified level of transportation service for a stated commodity quantity, from origin to destination, within a defined time frame. See § 514.13(b)(19).

Retrieval. See "interactive retrieval."

Round trip excursion voyage means a single voyage in domestic offshore commerce which originates and terminates at the same port, does not permanently disembark passengers at any intermediate port, and does not call at any port outside of the United States, its territories, commonwealths, districts or possessions. See § 514.3(a)(5).

Rules (in a tariff, i.e., Tariff Rules) means the stated policies set by the tariff owner in conformance with Commission regulations which govern the application of tariff rates, charges and other matters. See § 514.15.

Scope means the location group(s) (geographic grouping(s)) listing the ports or ranges of ports to and from which the tariff's rates apply. See § 514.11(b)(10).

Service contract means a contract between a shipper or shippers' association and an ocean common carrier or conference, in which the shipper makes a commitment to provide a certain minimum quantity of its cargo or freight revenue over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level -- such as, assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of either party. See § 514.7.

Service contract records means such documents and information as will enable the Commission to verify compliance with the terms of a service

contract and shall include freighted ocean bills of lading or equivalent shipping documents which establish that the terms of the contract are being or have been met. See § 514.7(l).

Shipment means all of the cargo carried under the terms of a single bill of lading.

Shipper means an owner or person for whose account the ocean transportation of cargo is provided and includes the person to whom delivery is to be made (consignee).

Shippers'association (foreign commerce) means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

Special case number means a code number assigned by the Commission to a specific filer for a limited, designated purpose, such as for a particular rate (TLI) increase to go into effect on less than statutory notice by special permission or for other ATFI associative checks to be bypassed. See § 514.9(b)(19).

Special permission means permission, authorized by the Commission, for certain tariff filings that do not conform with applicable regulations, usually involving effectiveness on less than the normal statutory notice.

Specimen bill of lading means a sample bill of lading contained in a tariff for example purposes, which, in ATFI, is achieved by electronically entering the terms contained on the carrier's bill of lading in the appropriate Tariff Rule. See § 514.15(b)(8).

Statement of essential terms means the concise summary of all essential terms of a service contract required to be filed with the Commission and made available to the general public in tariff format by the carrier or conference in its Essential Terms Publication. See § 514.17.

Submit or submission (foreign commerce—service contracts) means "file" or "filing" under this section. See § 514.7.

Substituted service means the occasional use of transportation facilities different from those which the publishing carrier normally and regularly offers to the public, and where transportation is usually performed by someone other than the publishing carrier due to unexpected operating exigencies. The offering or performing of a regular service by means of overland or air transportation over part of the publishing carrier's route, or by using a waterborne service not under the operational control of the publishing carrier, is an arrangement for intermodal transportation and may not be described as substituted service. See § 514.14.

Syntax check means an automatic system review of items in filings to check conformity with data element type and size, and other format requirements outlined in the "Batch Filing Guide." See § 514.8(n)(1)(i).

Tape batch filing. See "in-bulk batch filing."

Tariff means a publication containing the actual rates, charges, classifications, Tariff Rules, regulations and practices of a common carrier or conference of common carriers. The term "practices" refers to those usages, customs or modes of operation which in any way affect, determine or change the transportation rates, charges or services provided by a common carrier, and, in the case of conferences, must be restricted to activities authorized by the basic conference agreement.

Tariff amendments. See "amendment."

Tariff filing means any tariff or modification thereto which is received by the Commission as properly filed pursuant to these rules. See "file, filing" and § 514.8(c).

Tariff line item (TLI) (with a 14-digit number) means a single freight rate for cargo of a single commodity description which may move under a single specified set of transportation conditions such as container size or temperature for a specified time period. See § 514.13(b).

Tariff matter, tariff material, tariff publication means a tariff and the essential terms of service contracts, or any portion and amendment thereof, tendered for filing with the Commission pursuant to this part.

Tariff of general applicability (foreign commerce—service contracts) means the effective tariff, on file at the Commission under this part, that would apply to the transportation in the absence of a service contract. See §§ 514.7(h)(1)(iv) and 514.12(a).

Tariff record means a collection of tariff identification data that include the name and type of the tariff, the tariff number, publishing office, units of weight and measure, and the date the tariff was filed, the date it became effective, and the date it expires. See § 514.11(a).

Tariff Rule. See "rules (in a tariff)" and § 514.15.

Terminal services includes checking; dockage; free time; handling; heavy lift; loading and unloading; terminal storage; usage; wharfage; and, wharf demurrage, as defined in this section. The definition of terminal services set forth in this section shall be set forth in tariffs filed pursuant to this part except that other definitions of terminal services may be used if they are correlated by footnote or other appropriate method to the definitions set forth herein. Any additional services which are offered shall be listed and charges therefor shall be shown in terminal tariffs. See § 514.15(b)(23).

Terminal storage means the service of providing warehouse or other terminal facilities for the storage of inbound or outbound cargo after the expiration of free time, including wharf storage, shipside storage, closed or covered storage, open or ground storage, bonded storage and refrigerated storage, after storage arrangements have been made. See "terminal services" and § 514.15(b)(23).

Termination date means the expiration date of a service contract or the date the service contract is terminated for reasons not specifically set forth in the contract. See § 514.17(d).

Through intermodal transportation (domestic offshore commerce) means transportation at joint rates over a through route by two or more carriers, at least one of which is, and one of which is not, a domestic offshore carrier. Through transportation entirely by water may be intermodal transportation for purposes of this part when one or more participating carrier(s) is subject to rate regulation pursuant to subchapter III of chapter 105 of title 49 of the U.S. Code. See § 514.14.

Through rate (domestic offshore commerce) means a total charge for transportation from origin to destination. It may be a local rate, a joint rate, or a combination of separately established rates. See § 514.14.

Through rate (foreign commerce) means the single amount charged by a common carrier in connection with through transportation. See § 514.14.

Through route (domestic offshore commerce) means continuous transportation between origin and destination for which a through rate is assessed and which is offered or performed by:

(1) A single domestic offshore carrier offering service between port terminal areas;

(2) Two or more domestic offshore carriers; or

(3) One or more domestic offshore carriers in connection with one or more other carriers.

See § 514.14.

Through transportation (foreign commerce) means continuous transportation between points of origin and destination, either or both of which lie beyond port terminal areas, for

which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States point or port and a foreign point or port. See § 514.14.

Thru date means the date (11:59 p.m.) after which an amendment to a tariff element (e.g., TLI rate) is designated by the filer to be unavailable for use and the previously effective tariff element automatically goes back into effect. See "expiration date" and § 514.10(a)(5).

Time/volume rate (foreign commerce) means a rate published in a tariff which is conditional upon receipt of a specified aggregate volume of cargo or aggregate freight revenue over a specified period of time. See §§ 514.13(b)(19) and 514.15(b)(26).

TLI. See "tariff line item."

Trade name means a name that a common carrier uses for conducting business, but which is not its primary legal name. This is also known as a "d/b/a" (doing business as) name. See § 514.11.

Traditional tariff means a page-based tariff in which all of the tariff components are contained on the pages of a paper document. See § 514.8(k)(2).

Transaction set means a pre-defined, ATFI-compatible data format used for electronic batch filing (electronic data interchange or EDI) of tariff information. When using third-party software for batch filing, all data must be formatted into the appropriate transaction sets before it can be batch filed to the Commission through the ATFI system. The transaction set formats are available to the public in the ATFI "Batch Filing Guide." See § 514.8(d)(3).

Transshipment (domestic offshore commerce) means the physical transfer of cargo from one carrier to another in the course of a through route where at least one of the exchanging carriers is a vessel-operating, domestic offshore carrier. See §§ 514.14 and 514.15(b)(13).

Usage means the use of terminal facility by any rail carrier, lighter operator, trucker, shipper or consignee, its agents, servants, and/or employees, when it performs its own car, lighter or truck loading or unloading, or the use of said facilities for any other gainful purpose for which a charge is not otherwise specified. See "terminal services" and § 514.15(b)(23).

Validity check means a system review of certain items in filings to check conformity with reference tables outlined in the transaction sets and standard glossaries employed in ATFI, e.g., origin and destination locations must be correctly spelled and be members of the ATFI locations glossary. See § 514.8(n)(1)(ii).

Via port(s) means the port(s) at which a vessel calls for intermodal transportation from and/or to an inland point by a carrier of another mode, such as a railroad or a truck.

Wharf demurrage means a charge assessed against cargo remaining in or on terminal facilities after the expiration of free time, unless arrangements have been made for storage. See "terminal services."

Wharfage means a charge assessed against the cargo or vessel on all cargo passing or conveyed over, onto, or under wharves or between vessels (to or from barge, lighter, or water), when berthed at wharf or when moored in slip adjacent to wharf. Wharfage is solely the charge for use of wharf and does not include charges for any other service. See "terminal services" and § 514.15(b)(23).

§ 514.3 Exemptions and exclusions.

Applications for exemptions are governed by § 502.69 of this chapter. The following exemptions have been granted from certain described requirements of this part:

(a) *Certain services involved in the following:*

(1) *Equipment interchange agreements.* Equipment-interchange agreements between common carriers subject to this part and inland carriers, where such agreements are not referred to in the carriers' tariffs and do not affect the tariff rates, charges or practices of the carriers, are exempt from the tariff filing requirements of the 1916 and 1984 Acts and the rules of this part. See §§ 514.12(b)(3) and 514.15(b)(21).

(2) *Controlled common carriers in foreign commerce.* A controlled common carrier shall be exempt from the provisions of this part exclusively applicable to controlled common carriers (See § 514.4(c)) when:

(i) The vessels of the controlling state are entitled by a treaty of the United States to receive national or most-favored-nation treatment;

(ii) The controlling state subscribed, as of November 17, 1978, to the shipping policy statement contained in note 1, Annex "A" of the Code of Liberalization of Current Invisible Operations, adopted by the Council of the Organization for Economic Cooperation and Development;

(iii) As to any particular rate, the controlled common carrier's tariff contains an amount set by the duly authorized action of a ratemaking body, except that this exemption is inapplicable to rates established pursuant to an agreement in which all the members are controlled common carriers not otherwise excluded by this paragraph (see § 514.9(b)(24)(i)(A));

(iv) The controlled common carrier's rates, charges, classifications, Tariff Rules or regulations govern transportation of cargo between the controlling state and the United States, including its districts, territories and possessions (see § 514.9(b)(24)(i)(B)); or

(v) The controlled common carrier operates in a trade served exclusively by controlled common carriers (see § 514.9(b)(24)(i)(C)).

(3) *Interstate Commerce Commission ("ICC").* Transportation in domestic offshore commerce which is subject to the jurisdiction of the Interstate Commerce Commission under 49 U.S.C. Chapter 105 is exempt from the tariff filing requirements of the 1916 Act and the rules of this part.

(4) *Marine terminal operations of DOD.* When the Department of Defense (including the military department and all agencies of the Department of Defense) carries on the business of furnishing wharfage, dock, warehouse, or other terminal facilities, as defined in § 514.2, it shall be exempt from the terminal tariff filing and publication requirements of this part.

(5) *Round trip passenger excursion voyages in domestic offshore commerce.* Round trip passenger excursion voyages in domestic offshore commerce are exempt from the tariff filing requirements of the 1916 Act and the rules of this part.

(6) *Certain small vessels in domestic offshore commerce.* Transportation in domestic offshore commerce by vessels with a cargo carrying capacity of 100 tons or less, or with an indicated horsepower of 100 or less, is exempt from the tariff filing requirements of the 1916 Act and the rules of this part, only if such vessels:

(i) Are not employed by or under the common control or management of a domestic offshore carrier which operates vessels in excess of these limits;

(ii) Are not operated as part of a through route with another domestic offshore carrier; and

(iii) Are not performing lighterage services in connection with or on behalf of another domestic offshore carrier.

(7) *Terminal barge operators.* See § 514.1(c)(3)(ii)(B)(*2*).

(8) *Certain terminal services.* The filing requirements of this part do not apply to rates and charges for:

(i) Terminal services performed for water carriers pursuant to negotiated contracts; or

(ii) Storage of cargo and services incidental thereto by public

warehousemen pursuant to storage agreements covered by issued warehouse receipts.

(b) *Certain cargo types*—(1) *Bulk, forest products, etc.* (i) Except as provided in paragraphs (b)(1)(ii) and (iii) of this section, this part does not apply to bulk cargo, forest products, recycled metal scrap, waste paper and paper waste in foreign tariffs, terminal tariffs or service contracts.

(ii) Carriers or conferences which voluntarily file tariff or service contract provisions covering otherwise exempt transportation thereby subject themselves to all statutory provisions and the requirements of this part, including the requirement to adhere to the filed tariff provisions.

(iii) An exempt commodity listed in paragraph (b)(1) of this section may be included in a service contract filed with the Commission only if:

(A) There is a tariff of general applicability for the transportation which contains a specific commodity rate for the exempted commodity; or

(B) The contract itself sets forth a rate or charge which will be applied if the contract is rejected or otherwise terminated.

(2) *Mail in foreign commerce.* Transportation of mail between the United States and foreign countries is exempt from the filing requirements of the 1984 Act and the rules of this part.

(3) *Used military household goods—NVOCCs.* Transportation of used military household goods and personal effects by non-vessel-operating common carriers is exempt from the filing requirements of the 1916 and 1984 Acts and the rules of this part.

(4) *Department of Defense cargo in foreign commerce - certain requirements.* Transportation in foreign commerce of U.S. Department of Defense cargo by American-flag common carriers, under terms and conditions negotiated and approved by the Military Sealift Command ("MSC"), is subject to continuing special permission authority to deviate from the 30-day notice requirement of section 8 of the 1984 Act, if all the following conditions are met:

(i) Exact copies of all common carrier quotations or tenders accepted by MSC are filed with the Commission as soon as possible after they are approved by MSC, but no later than on the effective date;

(ii) The use of the filing symbol *"m"* under § 514.9(b)(13) is understood by the filer to mean that the tariff material filed is submitted in accordance with the requirements of the Shipping Act of 1984 and this part;

(iii) Tenders submitted for filing are to be consecutively numbered by the respective common carriers as part of a distinct tariff series; and

(iv) Amendments to tenders must also be filed with the Commission.

(c) *Certain locations in foreign commerce*—(1) *Between foreign countries.* This part does not apply to transportation of cargo between foreign countries, including that which is transshipped from one ocean common carrier to another (or between vessels of the same common carrier) at a U.S. port or transferred between an ocean common carrier and another transportation mode at a U.S. port for overland carriage through the United States, where the ocean common carrier accepts custody of the cargo in a foreign country and issues a through bill of lading covering its transportation to a foreign point of destination.

(2) *Between Canada and U.S.* The following services are exempt from the filing requirements of the 1984 Act and the rules of this part:

(i) *Prince Rupert and Alaska*—(A) *Vehicles.* Transportation by vessels operated by the State of Alaska between Prince Rupert, Canada and ports in southeastern Alaska, if all the following conditions are met:

(*1*) Carriage of property is limited to vehicles;

(*2*) Tolls levied for vehicles are based solely on space utilized rather than the weight or contents of the vehicle and are the same whether the vehicle is loaded or empty;

(*3*) The vessel operator does not move the vehicles on or off the ship; and

(*4*) The common carrier does not participate in any joint rates establishing through routes or in any other type of agreement with any other common carrier.

(B) *Passengers.* Transportation of passengers, commercial buses carrying passengers, personal vehicles and personal effects by vessels operated by the State of Alaska between Seattle, Washington and Prince Rupert, Canada, only if such vehicles and personal effects are the accompanying personal property of the passengers and are not transported for the purpose of sale.

(ii) *British Columbia and Puget Sound Ports; rail cars*—(A) *Through rates.* Transportation by water of cargo moving in rail cars between British Columbia, Canada and United States ports on Puget Sound, and between British Columbia, Canada and ports or points in Alaska, only if the cargo does not originate in or is not destined to foreign countries other than Canada, and if:

(*1*) The through rates are filed with the Interstate Commerce Commission and/or the Canadian Transport Commission; and

(*2*) Certified copies of the rate divisions and of all agreements, arrangements or concurrences, entered into in connection with the transportation of such cargo, are filed with the Commission within 30 days of the effectiveness of such rate divisions, agreements, arrangements or concurrences.

(B) *Bulk; port-to-port.* Transportation by water of cargo moving in bulk without mark or count in rail cars on a local port-to-port rate basis between ports in British Columbia, Canada and United States ports on Puget Sound, if the rates charged for any particular bulk type commodity on any one sailing are identical for all shippers, except that:

(*1*) This exemption shall not apply to cargo originating in or destined to foreign countries other than Canada; and

(*2*) The carrier will remain subject to all other provisions of the Shipping Act of 1984.

(iii) *Incan Superior, Ltd.* Transportation by Incan Superior, Ltd. of cargo moving in railroad cars between Thunder Bay, Ontario, and Superior, Wisconsin, only if the cargo does not originate in or is not destined to foreign countries other than Canada, and if:

(A) The through rates are filed with the Interstate Commerce Commission and/or the Canadian Transport Commission; and

(B) Certified copies of the rate divisions and of all agreements, arrangements or concurrences entered into in connection with the transportation of such cargo are filed with the Commission within 30 days of the effectiveness of such rate divisions, agreements, arrangements or concurrences.

(d) *Certain locations in domestic commerce*—(1) *Alaska*—(i) *Bethel—Kuskokwim Bay.* Transportation between Bethel, Alaska and points in the Kuskokwim Bay region in the range from Platinum to Mekoryuk is exempt from the filing requirements of the 1916 Act and the rules of this part.

(ii) *Seattle—S.E. Alaska on State-of-Alaska operated vessels.* Transportation of passengers, commercial buses carrying passengers, personal vehicles and personal effects by vessels operated by the State of Alaska between Seattle, Washington, and ports in Southeastern Alaska, is exempt from the filing requirements of the 1916 Act and the rules of this part, only if said personal

vehicles and personal effects are not transported for the purpose of sale, lease, or other commercial activities.

(2) *Hawaii*—(i) *Notice requirements.* Carriers providing all-water transportation between the continental United States (including Alaska and the District of Columbia) and Hawaii may publish new individual commodity rates, or reductions in existing individual rates, on one day's notice, and to that extent are exempted from the notice requirements of the 1916 Act and the rules of this part. See § 514.9(b)(24)(ii).

(ii) [Reserved]

(3) *Puerto Rico*—(i) *Notice requirements.* Carriers providing port-to-port transportation between the United States and Puerto Rico may publish new individual commodity rates, or reductions in existing individual rates, on one day's notice, and to that extent are exempted from the notice requirements of the 1916 Act and the rules of this part. See § 514.9(b)(24)(ii).

(ii) *Bulk liquid cargo.* Transportation between the continental United States and Puerto Rico of bulk liquid cargoes in quantities of not less than 200,000 gallons per shipment (i.e., a single shipper to a single consignee) is exempt from the filing requirements of the 1916 Act and the rules of this part, only if such shipments are carried in tank vessels designed exclusively for bulk liquid cargoes and which are certified under regulations approved by the U.S. Coast Guard pursuant to 46 U.S.C. 3306.

(4) *U.S. Virgin Islands*—(i) *Notice requirements.* Carriers providing port-to-port transportation between the United States, including Puerto Rico, and the U.S. Virgin Islands may publish new individual commodity rates, or reductions in existing individual rates, on one day's notice, and to that extent are exempted from the notice requirements of the 1916 Act and the rules of this part. See § 514.9(b)(24)(ii).

(ii) [Reserved]

(e) *Electronic filing.* A temporary exemption from the electronic filing requirements of this part may be obtained by application under § 514.8(a), but, during the period of such exemption and unless otherwise exempted by this part, tariff material is required to be filed in paper format under parts 515, 520, 550, 580 and/or 581 of this chapter.

§ 514.4 Content, filing and cancelation of tariff material; general.

(a) *Effectiveness of new or initial carrier and conference tariffs in the domestic offshore and foreign trades.* Unless otherwise provided by the Commission or this part, all conference and carrier tariffs tendered for filing (including the tariffs of carriers entering a trade for the first time), shall bear an effective date which permits at least 30 days' notice of the filing. The 30-day notice period between filing date and effective date shall commence at 12:01 a.m. of the day of filing under § 514.10(a)(2). The tariff may take effect at 12:01 a.m. of the 31st day. See §§ 514.9 and 514.10(a). The 30-day notice requirement is not applicable to service contracts and their essential terms under §§ 514.7 and 514.17.

(b) *Prohibitions*—(1) *Foreign language tariffs.* (i) Tariffs and essential terms of service contracts in foreign languages will not be accepted. Filers may, however, include foreign language commodity descriptions, TLI notes, and commodity index entries, but only if:

(A) The non-English entries follow the English entries; and

(B) The non-English text is precisely translated from the English.

(ii) The English wording shall have precedence in any question of interpretation.

(2) *Ambiguous, duplicating and conflicting provisions.* No person may publish and file any tariff matter which contains ambiguous language or duplicates or conflicts with any other tariff matter on file with the Commission in which such person is a party or participant, whether filed by such person or by an authorized agent.

(3) *Limiting or qualifying provisions*—(i) *Limitation of liability.* Tariffs may not contain Tariff Rules purporting to limit liability in a manner not authorized by law.

(ii) *Qualifying terms.* Tariffs may not contain terms such as "Taken by Special Agreement or Arrangement Only," "Subject to Carrier's Option of Acceptance," or "Carried at Cargo Owner's Risk," which terms (unless accompanied by sufficient qualifying language explaining a more limited interpretation) are clearly inconsistent with the legal responsibilities of a common carrier towards the shipping public.

(iii) *Exculpatory tariff provisions.* No terminal tariff may contain provisions that exculpate or otherwise relieve marine terminal operators from liability for their own negligence, or that impose upon others the obligation to indemnify or hold-harmless the terminals from liability for their own negligence.

(iv) *Rates in other tariffs.* Except as specifically allowed in this part (see § 514.12):

(A) No rate tariff may require reference to or be governed by another rate tariff; and

(B) The publication of a statement in a tariff to the effect that the rates published therein take precedence over the rates published in some other tariff, or that the rates published in some other tariff take precedence over or alternate with rates published therein, is prohibited.

(v) *Modification of essential terms.* Essential terms of service contracts may not contain any provision permitting modification by the parties other than in full compliance with this part.

(c) *Controlled common carriers*—(1) *Controlled common carrier rates*—(i) *Level of rates and charges.* Except as provided in § 514.3(a)(2), no controlled common carrier may maintain rates or charges in its tariffs filed with the Commission that are below a level that is just and reasonable, nor may any such carrier establish or maintain unjust or unreasonable classifications, Tariff Rules, or regulations in those tariffs. An unjust or unreasonable classification, Tariff Rule or regulation means one that results or is likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level.

(ii) *Commission disapproval.* The Commission may, at any time after notice and hearing, disapprove any rates, charges, classifications, Tariff Rules or regulations that the controlled common carrier has failed to demonstrate to be just and reasonable. In a proceeding under this paragraph, the burden of proof is on the controlled common carrier to demonstrate that its rates, charges, classifications, Tariff Rules or regulations are just and reasonable. Rates, charges, classifications, Tariff Rules or regulations filed by a controlled common carrier that have been rejected, suspended, or disapproved by the Commission are void and their use is unlawful.

(iii) *Effective date of rates.* The rates, charges, classifications, Tariff Rules or regulations of controlled common carriers may not, without special permission of the Commission, become effective sooner than the 30th day after the date of filing with the Commission.

(2) *Classification as a controlled common carrier.* (i) The Commission will notify any common carrier of its classification as a controlled common carrier and enter such classification in ATFI.

(ii) Any common carrier contesting such a classification may, within 30 days after the date of the Commission's notice, submit a rebuttal statement.

(iii) The Commission shall review the rebuttal and notify the common carrier of its final decision within 30 days from the date the rebuttal statement was filed.

(d) *Duty and authority to file*—(1) *General procedure.* (i) Except as provided in paragraph (d)(1)(ii) of this section, authority to obtain or delegate authority for using USERID and password under § 514.8(f) for filing and amending particular types of tariff material, as well as authority to change filing and editing authority, must be requested by a responsible official of the tariff owner in writing, using the registration form in exhibit 1 to this part, showing (or attaching) all necessary approvals and paying the appropriate fee under § 514.21.

(ii) In an emergency, a person, already authorized to maintain and edit its firm's organization record under § 514.11(a), may change a "publisher" under § 514.11(a)(9)(iii), verbally notify BTCL, and promptly submit the proper registration form, documents and fee.

(2) *Domestic offshore tariffs.* (i) Tariffs in domestic offshore commerce may be filed only by a responsible official of, or a tariff agent appointed by, a domestic offshore carrier participating in the transportation offered therein. When a tariff agent is employed, a delegation of authority from each participating, domestic offshore carrier must be provided.

(ii) The request for filing authority shall state that a tariff agent has been appointed as of a particular date, identify the agent by name and business address, indicate whether and under what circumstances any other person is authorized to serve as an alternate agent, and specifically set forth the agent's powers and duties to act for the carrier in tariff matters. Only one alternate agent may be appointed.

(iii) More than one delegation of authority covering any one tariff is prohibited, except that governing tariffs filed pursuant to § 514.12 may be the subject of separate delegations. Submission of a subsequent delegation of authority covering a tariff, governing tariff or group of tariffs, shall automatically revoke any earlier delegation as to that tariff or tariffs on the day the subsequent delegation is filed, as evidenced by the Commission's receipt notation.

(iv) A delegation of authority to a tariff agent may be revoked in whole or in part by filing a written revocation which clearly identifies the delegation of authority and the particular powers and duties being revoked.

(v) Should a carrier enter receivership, or otherwise come under the control of a trustee, the duty and authority to file tariff material shall be upon the receiver or trustee appointed until the receivership/trusteeship is terminated.

(3) *Foreign tariffs.* (i) Tariffs in foreign commerce shall be filed by an officer or employee of the common carrier or, if a conference tariff, by an officer or employee of the conference. In the alternative, filing may be accomplished through an agent authorized to act for such common carrier or conference.

(ii) A common carrier or conference may delegate authority to a person, not an official or employee of such common carrier or conference, for the purpose of issuing all its tariffs or any particular tariff.

(iii) Whenever there is a delegation of tariff-issuing authority by a common carrier or conference, the request shall set forth the exact limits of the agent's authority.

(4) *Conference-related situations in foreign commerce*—(i) *Admission to membership.* When a common carrier is admitted to membership in a conference, cancelation of the common carrier's individual tariff (if any) in the trade served by the conference and addition of the newly admitted common carrier to the listed participating common carriers in the conference tariff shall be filed with the Commission and may become effective upon the date of such filing, except that:

(A) If the common carrier has an individual tariff in the trade served by the conference and cancelation of that tariff and addition of the common carrier to the conference tariff would result in an increase in that common carrier's rates, the common carrier shall, 30 days prior to being admitted as a new conference member, cancel its individual tariff effective 30 days from date of cancelation, making reference to the conference tariff and where it may be examined, unless special permission to become effective in less than 30 days has been granted by the Commission pursuant to § 514.18; and

(B) A controlled common carrier newly admitted to membership in a conference shall, 30 days prior to admission, electronically file notice of cancelation of any applicable independent tariff effective upon the date of admission to conference membership, unless special permission has been granted by the Commission pursuant to § 514.18.

(ii) *Duties of members.* (A) Common carrier participants in a conference tariff are not relieved from the necessity of complying with the Commission's regulations and the requirements of section 8(a)(1) of the 1984 Act with regard to keeping tariffs open for public inspection. See § 514.8(k)(1).

(B) A common carrier's obligation to file tariffs pursuant to section 8(a) of the 1984 Act and this part must be carried out as follows:

(*1*) When the common carrier is not a party to an agreement, by filing its own tariff or tariffs.

(*2*) When the common carrier is party to an agreement, by participation in a single tariff filed by the conference, except that this requirement shall not apply to:

(*i*) Ratemaking agreements either between or among conferences, or between one or more conferences and one or more independent carriers; or

(*ii*) New conference agreements, new members to such agreements, or enlargements of the geographic scope of conference agreements, until ninety (90) days after the fact, unless special permission to extend that period is granted for good cause shown.

(C) When the common carrier's tariff is a conference tariff, the common carrier shall ensure that the conference publishes the common carrier's tariff provisions in the conference tariff.

(iii) *Independent action rates of controlled carriers.* Conferences may file on behalf of their controlled common carrier members lower independent-action rates on less than 30 days' notice, subject to the requirements of their basic agreements and subject to such rates being filed at or above the level set by a member of the conference that has not been determined by the Commission to be a controlled common carrier subject to section 9 of the 1984 Act, in the trade involved.

(5) *Service contracts and essential terms in foreign commerce.* (i) As further provided in paragraph (d)(5)(ii) of this section, the duty under this part to file service contracts, statements of essential terms and notices, and to maintain an essential terms publication under § 514.17, shall be upon:

(A) A service contract signatory carrier which is not a member of a conference for the service covered by the contract; or

(B) The conference which:

(*1*) Is signatory to the service contract; or

(*2*) Has one or more member carriers signatory to a service contract for a service otherwise covered by the conference agreement.

(ii) When a conference files a service contract for and on behalf of one or more of its member lines and the contract covers service from, to or between ports and/or points not included within the scope of the conference, the complete text of the statement of essential terms shall be simultaneously filed in the essential terms publications of both the

conference(s) and carrier(s) involved, which shall comply with all other essential terms publication filing and maintenance requirements under §§ 514.7 and 514.17.

(6) *Transfer of operations or control: changes in name or conference membership.* (i)(A) Whenever a common carrier with an individual tariff on file changes its name or transfers operating control to another person, the person who will thereafter operate the common carrier service shall submit a written request to the FMC to procedurally transfer the tariff to the succeeding firm. Subsequent amendments to such tariffs shall be in the name of the new common carrier.

(B) Requests to procedurally transfer only part of the service extended under a given rate tariff will not be granted.

(ii) Domestic offshore tariffs naming participating carriers shall be amended within 90 days whenever any participating carrier transfers its operations, transfers control of its business, or changes its name, and the successor carrier continues to participate in the service. The amendment shall delete all references to the transferring carrier (or old name) and substitute references to the successor carrier (or new name) in their place.

(iii) Whenever the name of a common carrier which participates in a conference is changed, the conference shall file an appropriate amendment to its tariff indicating the participating common carrier's new name.

(iv) Whenever the operation, control or ownership of a common carrier is transferred resulting in a majority portion of the interest of that common carrier being owned or controlled in any manner by a government under whose registry the vessels of the common carrier are operated, the common carrier shall immediately notify the Commission in writing of the details of the change.

(e) *Cancelation*—(1) *Tariffs.* (i) An entire tariff may be cancelled by the filer, or by the Commission for good cause, by appropriately changing the expiration date in the tariff record. See § 514.11(b).

(ii) Cancelation of a tariff due to a cessation of all service by the publishing carrier between the ports or points listed in the cancelled tariff may take effect on the same day it is filed.

(iii) The tariffs and delegations of authority of a carrier which ceases operations in a trade for more than 30 days (other than for seasonal discontinuance) shall be cancelled within 60 days after the cessation of operations.

(2) *Essential terms.* The statement of essential terms may not be cancelled until after all of its associated service contracts, including any renewal or extension, have expired. In the event a contract is terminated under § 514.7(l)(1)(ii), the effective date of the termination shall be used as the date of cancelation (contract termination date under § 514.17(d)(5)).

§ 514.5 [Reserved]

§ 514.6 [Reserved]

Subpart B—Service Contracts

§ 514.7 Service contracts in foreign commerce.

(a) *Scope and applicability.* Service contracts shall apply only to transportation of cargo moving from, to or through a United States port in the foreign commerce of the United States. While tariffs and the essential terms of service contracts are required to be filed electronically and made available to the public under subpart C of this part, service contracts themselves (incorporating mandatory essential terms as described in § 514.17 and confidential names of shippers, etc.), as well as certain related notices, shall be filed in paper, hard copy format under this subpart and section.

(b) *Confidentiality*—(1) *Service contracts.* All service contracts filed with the Commission shall, to the full extent permitted by law, be held in confidence.

(2) *Amendments to non-essential terms.* Amendments to *non-essential* terms of a service contract shall be accorded similar confidential treatment. (*Essential* terms may not be amended but may be corrected under paragraph (k) of this section.)

(c) *Exempt commodities.* Except as provided in paragraphs (c)(1) and (c)(2) of this section, this section does not apply to contracts relating to bulk cargo, forest products, recycled metal scrap, waste paper or paper waste.

(1) *Inclusion in service contracts.* An exempt commodity listed in this paragraph may be included in a service contract filed with the Commission, but only if:

(i) There is a tariff of general applicability for the transportation, which contains a specific commodity rate for the exempted commodity; or

(ii) The contract itself sets forth a rate or charge which will be applied if the contract is rejected or otherwise terminated.

(2) *Waiver of exemption.* Upon filing under this paragraph, the service contract and essential terms shall be subject to the same requirements as those for contracts involving non-exempt commodities.

(d) *Service contracts with non-vessel-operating common carriers.* No ocean common carrier or conference may execute or file any service contract in which a contract party, an affiliate of such contract party, or a member of a shippers' association, entitled to receive service under the contract, is a non-vessel-operating common carrier, unless such non-vessel-operating common carrier has a tariff and a bond as required by sections 8 and 23 of the 1984 Act and Commission regulations under this part and part 583 of this chapter.

(e) *Certification of shipper status*—(1) *Certification.* The shipper contract party shall certify on the signature page of the service contract its shipper status, e.g., owner of the cargo, shippers' association, non-vessel-operating common carrier, or specified other designation, and the status of every affiliate of such contract party or member of a shippers' association entitled to receive service under the contract. The certification shall be signed by the contract party.

(2) *Proof of tariff and bond.* If the certification completed by the contract party under paragraph (e)(1) of this section identifies the contract party or an affiliate or member of a shippers' association as a non-vessel-operating common carrier, the ocean common carrier or conference shall obtain proof that such non-vessel-operating common carrier has a tariff and a bond as required under section 8 and 23 of the 1984 Act before signing the service contract. An ocean common carrier or conference can obtain proof of an NVOCC's compliance by consulting a current list published by the Commission of NVOCCs in compliance with the tariff and bonding requirements or by reviewing a copy of the tariff rule published by the NVOCC and in effect under § 514.15(b)(24).

(3) *Joining shippers' association during term of contract.* If an NVOCC joins a shippers' association during the term of a service contract and is entitled to receive service under the contract, the NVOCC shall provide to the ocean common carrier or conference the proof of compliance required by paragraph (e)(2) of this section prior to any shipments under the contract.

(4) *Reliance on NVOCC proof; independent knowledge.* An ocean common carrier or conference executing a service contract shall be deemed to have complied with section 10(b)(15) of the 1984 Act upon meeting the requirements of paragraphs (e)(1) and (e)(2) of this section, unless the ocean

common carrier had reason to know such certification or documentation of non-vessel-operating common carrier tariff and bonding was false.

(f) *Availability of essential terms.* A statement of the essential terms of each service contract as set forth in tariff format shall be made available for inspection by the general public pursuant to the requirements of this section and § 514.17.

(1) *Availability of terms.* The essential terms of an initial service contract shall be made available for use in a contract to all other shippers or shippers' associations similarly situated, under the same terms and conditions, for a specified period of no less than thirty (30) days from the date of filing of the essential terms of the service contract under § 514.17, as may be adjusted under paragraph (j)(4) of this section.

(2) *Me-too requests and replies.* (i) Whenever a shipper or shippers' association desires to enter into a service contract with the same essential terms as in another existing service contract, a request shall be submitted to the carrier or conference in writing.

(ii) The carrier or conference shall reply to the request by mailing, or other suitable form of delivery, within 14 days of the receipt of the request, either a contract offer with the same essential terms which can be accepted and signed by the recipient upon receipt, or an explanation in writing why the applicant is not entitled to such a contract. The carrier or conference may require the contract offer to be accepted within a specified period of time.

(3) *Filing of me-too contracts.* The service contract resulting from a request under this section may not go into effect until an executed copy is filed with the Commission under this section. No additional statement of essential terms need be filed.

(4) *Changes in me-too contracts.* In the case of any expressly described subsequent event which results in a change to an original essential term by the operation of a contract clause in the service contract under § 514.17(d)(8)(vi), the new essential term(s) shall be immediately made available in writing to other shippers and shippers' associations which have entered into a contract with the same, original essential terms, and which are similarly affected by the event. Copies shall also be submitted to the Commission under paragraph (g)(2)(i) of this section.

(g) *Filing of service contract materials.* Authorized persons under § 514.4(d)(5) shall file with BTCL the following:

(1) *Service contracts.* Within ten (10) days of the electronic filing of essential terms under § 514.17, a true and complete copy of the related contract(s) shall be submitted in form and content as provided by this section and § 514.17, in single copy contained in a double envelope, which contains no other material, as follows:

(i) The outer envelope shall be addressed to: "Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573."

(ii) The inner envelope shall be sealed, contain only the executed contract, and shall state: "This Envelope Contains a Confidential Service Contract."

(iii) The top of each page of a filed service contract shall be stamped "Confidential."

(2) *Notices of: change to contract, contract party or rate; availability of changed terms to similarly-situated shippers; and settlement of account.* There shall be filed with the Commission, pursuant to the procedures of paragraph (g)(1) of this section, a detailed notice, within 30 days of the occurrence, of:

(i) The making available of contingent essential terms to similarly situated shippers under paragraph (f)(4) of this section;

(ii) Termination under paragraph (l)(1)(ii) of this section by mutual agreement, breach or default not covered by the service contract;

(iii) The adjustment of accounts, by rerating, liquidated damages, or otherwise under paragraph (l) of this section;

(iv) Final settlement of any account adjusted as described in paragraph (g)(2)(iii) of this section; and

(v) Any change to:

(A) The name of a basic contract party under paragraph (h)(1)(v) of this section; or

(B) The list of affiliates under paragraph (h)(1)(vi) of this section of any contract party entitled to receive or authorized to offer services under the contract.

(h) *Form and content.* Every service contract shall clearly, legibly and accurately set forth in the following order:

(1) *On the first page, preceding any other provisions:* (i) A unique service contract number bearing the prefix "SC" (see § 514.17(d)(2));

(ii) The ATFI number ("Tariff # ————") of the carrier's or conference's essential terms publication (See §§ 514.11(b) and 514.17(b));

(iii) A reference to the statement of essential terms ATFI number ("ET Number ————") as provided in § 514.17(d)(2);

(iv) The ATFI number(s) ("Tariff # ————") of the tariff(s) of general applicability;

(v) The names of the contract parties. Any further references in the contract to such parties shall be consistent with the first reference (e.g., (exact name), "carrier," "shipper," or "association," etc.); and

(vi) Every affiliate of each contract party named under paragraph (h)(1)(v) of this section entitled to receive or authorized to offer services under the contract, except that in the case of a contract entered into by a conference or shippers' association, individual members need not be named unless the contract includes or excludes specific members. In the event the list of affiliates is too lengthy to be included on the first page, reference shall be made to the exact location of such information.

(2) *On the second and subsequent pages:* (i) The complete terms of the contract, including:

(A) All essential terms as required under § 514.17, preferably in the order and format prescribed by § 514.17(d); and

(B) Other terms of the contract;

(ii)(A) A description of the shipment records which will be maintained to support the contract; and

(B) The address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection under paragraph (m) of this section; and

(iii) The number of free days and charges for use of carrier or conference provided equipment. The carrier or conference may reference its tariff of general applicability or equipment interchange tariff. In those instances, reference need be made to Tariff Rule 21 (§ 514.15(b)(21)) and the applicable tariff number only.

(3) *On the signature page:* (i) Signatures of all necessary contract parties; and

(ii) A certification of shipper status in accordance with paragraph (e) of this section.

(i) [Reserved]

(j) *Contract rejection and notice; implementation*—(1) *Initial filing and notice of intent to reject*—(i) Within 20 days after the initial filing of the contract, the Commission may notify the filing party of the Commission's intent to reject a service contract and/or statement of essential terms that does not conform to the form, content and filing requirements of the Act or this part. The Commission will provide an

explanation of the reasons for such intent to reject.

(ii) The parties will have 20 days after the date appearing on the notice of intent to reject to resubmit the contract (in paper form under paragraph (g) of this section) and/or statement of essential terms (in electronic form under § 514.17), modified to satisfy the Commission's concerns.

(2) *Rejection.* The Commission may reject the contract and/or statement of essential terms if the objectionable contract or statement:

(i) Is not resubmitted within 20 days of the notice of intent to reject; or

(ii) Is resubmitted within 20 days of the notice of intent to reject as provided in paragraph (j)(1)(ii) of this section, but still does not conform to the form, content or filing requirements of the Act or this part.

(3) *Implementation; prohibition and rerating.* (i) Performance under a service contract may begin without prior Commission authorization on the day both the service contract and statement of essential terms are on file with the Commission, except for rejection under paragraph (j)(3)(ii) of this section;

(ii) When the filing parties receive notice that the service contract or statement of essential terms has been rejected under paragraph (j)(2) of this section:

(A) Further or continued implementation of the service contract is prohibited;

(B) All services performed under the contract shall be rerated in accordance with the otherwise applicable tariff provisions for such services with notice to the shipper or shippers' association within 30 days of the date of rejection; and

(C) Detailed notice shall be given to the Commission under paragraph (g)(2) of this section within 30 days of:

(*1*) The rerating or other account adjustment resulting from rejection under this paragraph; and

(*2*) Final settlement of the account adjusted under paragraph (j)[(3)(ii)(C)(*1*) of this section.

(4) *Period of availability.* The minimum 30-day period of availability of essential terms required by paragraph (f)(1) of this section shall be suspended on the date of the notice of intent to reject a service contract and/or statement of essential terms under paragraph (j)(1)(i) of this section and a new 30-day period shall commence upon the resubmission thereof under paragraph (j)(1)(ii) of this section.

(k) *Modification, correction and cancelation of service contract terms.* The essential terms originally set forth in a service contract may not be amended but may be corrected pursuant to this section and § 514.17.

(1) *Request for correction.* Either party to a filed service contract may request permission to correct clerical or administrative errors in the essential terms of a filed contract. Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within 45 days of the contract's filing with the Commission and shall include:

(i) A letter of transmittal explaining the purpose of the submission, and providing specific information to identify the service contract to be corrected;

(ii) A paper copy of the proposed correct essential terms. Corrections shall be indicated as follows:

(A) Matter being deleted shall be struck through; and

(B) Matter to be added shall immediately follow the language being deleted and be underscored;

(iii) An affidavit from the filing party attesting with specificity to the factual circumstances surrounding the clerical or administrative error, with reference to any supporting documentation;

(iv) Documents supporting the clerical or administrative error; and

(v) A brief statement from the other party to the contract concurring in the request for correction.

(2) *Filing and availability of corrected materials.* (i) If the request for correction is granted, the carrier or conference shall file the corrected contract provisions under this section and/or a corrected statement of essential terms under § 514.17, using a special case number under § 514.9(b)(19). Corrected essential terms shall be made available to all other shippers or shippers' associations similarly situated for a specified period of no less than fifteen (15) days from the date of the filing of the corrected essential terms. The provisions of paragraphs (f)(1) to (f)(3) of this section shall otherwise apply.

(ii) The provisions of paragraph (k)(2)(i) of this section do not apply to clerical or administrative errors that appear only in a confidentially filed service contract but not also in the relevant essential terms publication.

(iii) Any shipper or shippers' association that has previously entered into a service contract that is corrected pursuant to this paragraph may elect to continue under that contract with or without the corrected essential terms.

(3) *Cancelation.* See paragraph (l) of this section and § 514.4(e)(2).

(l) *Accounting adjustments; rerating; notice*—(1) *Account adjustment; rerating*—(i) *Events and damages covered by contract.* An account shall be adjusted when there is either liability for liquidated damages under § 514.17(d)(8)(v), or the occurrence of an event described in § 514.17(d)(8)(vi).

(ii) *Mutual termination or shipper failure to meet cargo minimum not covered by the contract.* In the event of a contract termination which is not provided for in the contract itself and which results from mutual agreement of the parties or because the shipper or shippers' association has failed to tender the minimum quantity required by the contract:

(A) Further or continued implementation of the service contract is prohibited; and

(B) The cargo previously carried under the contract shall be rerated according to the otherwise applicable tariff provisions of the carrier or conference in effect at the time of each shipment.

(2) *Notice to contract party.* A proposed final accounting or rerating under this section shall be issued to the appropriate contract party within 60 days of termination, discontinuance, breach or default of the service contract, for:

(i) Liability for liquidated damages under § 514.17(d)(8)(v);

(ii) The occurrence of an event under § 514.17(d)(8)(vi); or

(iii) Termination, breach or default not covered by the contract.

(3) *Notice to Commission.* Detailed notice of any termination, rerating, and/or account adjustments, as well as final settlement of an adjusted account, shall be given to the Commission under paragraph (g)(2) of this section.

(m) *Record keeping and audit*—(1) *Records retention for five years.* Every common carrier or conference shall maintain service contract records in an organized, readily accessible or retrievable manner for a period of five years from the termination of each contract.

(2) *Where maintained.* (i) Service contract records shall be maintained in the United States, except that service contract records may be maintained outside the United States if the Chairman or Secretary of a conference or President or Chief Executive Officer of a carrier certifies annually by January 1, on a form to be supplied by the Commission, that service contract records will be made available as provided in paragraph (m)(3) of this section.

(ii) If service contract records are not made available to the Commission as provided in paragraph (m)(3) of this section, the Commission may cancel any carrier's or conference's right to maintain records outside the United

States pursuant to the certification procedure of paragraph (m)(2) of this section.

(3) *Production for audit within 30 days of request.* Every common carrier or conference shall, upon written request of the Director, Bureau of Investigations, or the Director of any District Office, submit requested service contract records within 30 days from the date of the request.

Subpart C—Form, Content and Use of Tariff Data

§ 514.8 Electronic filing.

(a) *Exemptions.* (1) All tariffs required to be filed by this part shall be filed in the proper electronic form and manner unless specifically exempted by the Commission.

(2) A petition for a temporary exemption from the electronic filing requirements of this part shall be filed with the Secretary of the Commission under § 502.69 of this chapter and § 514.21. Unless a complete exemption from filing tariff material is warranted, the petitioner obtaining the exemption will still be required to file tariffs in paper format during the period of the exemption.

(b) *User manual.* A user manual for electronic filing (and/or retrieval) may be purchased from BTCL for a fee set forth in § 514.21. The user manual contains the following:

(1) *ATFI Fundamentals Guide,* which provides the basic ATFI concepts and the general system background to understand the procedures for ATFI use.

(2) *ATFI System Handbook,* which describes system use characteristics, provides high-level introduction to users' interfaces, i.e., menus and screens, outlines the information contained in the guides, and is a quick reference source for experienced users.

(3) *ATFI Tariff Retrieval Guide,* which provides complete instructional detail on the retrieval procedures to access all components of a tariff using the ATFI central site system in interactive mode.

(4) *ATFI Interactive Filing Guide,* which provides complete instructional detail on the interactive filing procedures to create and maintain all components of a tariff using the ATFI central site system in interactive mode.

(5) *ATFI "Batch Filing Guide"* (see paragraph (d)(3) of this section), which presents information to tariff filers who prepare new tariff submissions or modifications in an "off-line" or batch mode, and then submit the batch filings to the Commission either electronically (on-line batch) or by tape (tape or in-bulk batch). Contains the ATFI transaction sets for proper formatting of batch filings.

(c) *Filing; types of filing.* In all cases, interactive, on-line batch or tape batch, the filing session is processed immediately after submission/receipt of the filing session information. The ATFI system assigns the filing date, which is the processing date in local time in the U.S. Eastern Time Zone. After the filing session is processed, a filing results message is placed in the filers electronic mailbox on the central site system.

(1) *Interactive filing.* Interactive tariff filing uses a modem and VT-100-type terminal (or VT-100-type terminal emulation on a personal computer) for ATFI access to create tariff filings, verify previous filings, and perform sample freight calculations for verification of filed information, using ATFI system screens and pop-up windows. The modem must adhere to one of the following standards: Bell 212 (1200 baud); CCITT V.22 (2400 baud); or CCITT V.32 (9600 baud). The filing is submitted when the filer executes the command to "File all Authorized Changes" and ATFI's "sent" response indicates completion of that filing session submission.

(2) *On-line batch filing.* On-line batch filing is performed by transmission of prepared tariff material to the ATFI system over dial-up lines from the filer's own computer, using published ATFI transaction set formats and the KERMIT file transfer protocols. The conclusion of the file transfer sequence is a positive keyboard entry to initiate the transfer and a response that indicates completion of that submission. The modem requirements are the same as those in paragraph (c)(1) of this section. On-line batch filing requires a computer and software capable of producing tariff material according to the ATFI transaction sets, and transmitting via KERMIT protocol. KERMIT is public domain software and is available from: KERMIT Distribution, Columbia University Center for Computing Activities, 612 West 115th Street, New York, NY 10025.

(3) *In-bulk (tape) batch filing.* Tape batch filing is accomplished by physical delivery of prepared tariff material on magnetic tape, in the published ATFI transaction set formats, to the ATFI Computer Center. The session is processed after receipt of the tape at the ATFI Computer Center. In-bulk batch filing requires a computer and software capable of producing tariff material according to the ATFI transaction sets, and recording this on 9-track 1600 bpi or 6250 bpi tape according to standards outlined in the "Batch Filing Guide." See paragraph (d)(3) of this section.

(d) *General format requirements*—(1) *Database format.* The ATFI database is structured from tariff data elements and the tariff objects (see paragraph (h) of this section) formed by logical grouping of those elements. For example, a TLI is a tariff object which contains data elements for origin, destination, rate, basis, service, etc. The tariff objects are relational, with the "master" record being the organization record for a firm. One or more tariff records would be "related" to that organization record. All required and optional Tariff Rules, any number of commodity descriptions, desired location groups and inland rate tables are related to a specific tariff record. TLIs are related to a specific commodity description and assessorial-charge algorithms are related to specific Tariff Rules, commodity descriptions or TLIs. This relational structure allows interactive ATFI users to quickly locate specific tariff objects regardless of the filing organization, tariff type or trade. Although the data formats are very precise and the CRT displays standard, the traditional page format is no longer in use. See paragraph (l)(1) of this section.

(2) *Batch transmission.* Batch transmission of tariff materials to the ATFI computer, either on-line or in-bulk, is governed by the transaction sets contained in the "Batch Filing Guide." Tariff filings not complying with the regulations in this part or the formats and valid codes contained in the "Batch Filing Guide" are subject to rejection.

(3) *"Batch Filing Guide."* The ATFI "Batch Filing Guide" is published and updated in Pike and Fischer "Shipping Regulation," SR 322:421, and a copy is available from the FMC. The ATFI "Batch Filing Guide" is incorporated by reference in this part, as approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The "Batch Filing Guide" includes the following items:

(i) *Transaction sets.* The transaction set formats also include transaction set segments, data elements, and reference tables.

(ii) *Data Element Dictionary ("DED") and Valid Reference Table Entries* for certain data elements (e.g., service codes, container type codes, currency codes, etc.), calculation statement definitions, and condition and calculation statement data fields. For interactive filing, valid reference table entries can be accessed on help screens.

(4) *Adding new transaction data.* Requests for additions to the transaction set data dictionary or reference tables shall be submitted to BTCL. When additions are made to the ATFI data

dictionary, a minimum of sixty days' notice will be given to the public via the ATFI system news, available at system logon, and by other established Commission communications procedures. Requests may include additions to any of the following term and reference lists: Cities; States and provinces; Countries; Ports; Condition statements; Calculation statements; Weight units; Volume units; Container sizes; Container types; Container temperatures; Hazard codes; Inland modes; Packaging types; Service types; Shipment types; Stuffing mode; Stripping mode; and Currencies.

(e) *Hardware and software requirements.* The basic equipment suite necessary to access ATFI is a VT-100-type terminal (including CRT) and a modem. A more sophisticated suite for ATFI access would be composed of a personal computer (PC) (including CRT), a VT-100 emulation software package, and a modem. For batch filers the transmitted filing session must be formatted to comply with the transaction sets. The transmission may be via the use of KERMIT file transfer protocols after establishing a link for on-line batch filing with the ATFI central site computer (see paragraph (c)(2) of this section).

(f) *Password and User ID.* (1) System identification ("ID") for logon and initial password assignments, for either filing or retrieval, are obtained by submitting to BTCL the ATFI User Registration Form (exhibit 1 to this part), along with the proper fee under § 514.21 and other necessary documents prescribed by § 514.4(d) of this part. The logon IDs and Passwords are issued to individual users. Logon IDs remain constant unless circumstances dictate a change (forgotten, lost, compromised, etc.); however, passwords should be changed during the first session and regularly after that. Each ATFI user is responsible for maintaining security and control over its individual password.

(2) Because ATFI will have sophisticated accounting and reporting functions to track utilization for user charges under § 514.21 and other purposes, users who disclose their logon ID or password assume the following risks:

(i) System use by another person using the "borrowed" logon ID will be included in the utilization statistics for the registered user;

(ii) The "borrowing" user may change the password, thus precluding use by the registered user; and

(iii) Substandard, inaccurate or rejected filings by the "borrowing" person will be traced to the registered user in an audit.

(g) *Connecting to ATFI; procedures.* If ATFI user equipment (hardware and software) is compatible with the configurations specified in paragraph (e) of this section, and the proper ID and password have been obtained under paragraph (f) of this section, on-line ATFI services (interactive retrieval, interactive filing, and on-line batch filing) are available to users registered for the respective services, over commercial telecommunications using standard asynchronous modems with data rates up to 9600 baud. The dial-up procedures and number (including the ATFI Hot Line number) are available through BTCL at (202) 523-5796.

(h) *Major menu selections.* Proper connection will lead the user to the "ATFI Logo-Menu," which allows selections for "Retrieval CBI," "Mailbox," "ATFI System News," "Change Password," "Screen Setup," and "Logoff." Additionally, a registered filer can access "Interactive Filing," "Filing CBI," and "Filing Practice," while a registered retriever can access "Tariff Retrieval" and "Retrieval Practice." Upon the selection of either "Interactive Filing" or "Tariff Retrieval," the user will be led to the "Main Menu," which allows selection (with help screens and windows) of the following items and subitems (see also the anti-rebate policy notice in paragraph (j) of this section). The tariff *objects* (in addition to * "Commodity Descriptions" and * "TLIs") are marked with an asterisk (*).

(1) *Select Tariff.* This selection allows access to a particular tariff which can be selected by "Organization Number," "Origin" and "Destination," and/or "Organization Trade Name."

(2) *Rate Inquiry.* This selection is used for "Commodities" (§ 514.13(a)), "TLIs" (§ 514.13(b)), "Access Dates" (§ 514.10(a)(1)), and "Algorithms" for assessorial charges and calculations (§ 514.10(d)). For essential terms publications, "Rate Inquiry" provides access to the * "Essential Terms" of service contracts (§ 514.17).

(3) *Other Tariff Components.* This selection provides another menu for:

(i) ** Rules (Tariff Rules).* See § 514.15.

(ii) *Inland Rates.* (This provides access to * "Inland Rate Tables.") See § 514.14.

(iii) *Commodity Index.* (This can also be accessed from the "Commodity Search" screen under "Rate Inquiry.") See § 514.13(a)(4).

(iv) ** Location Groups.* See § 514.10(b).

(v) *Tariff Definition.* This selection provides another menu for:

(A) ** Tariff Record.* See § 514.11(b).

(B) *Origin Scope.* See § 514.11(c).

(C) *Destination Scope.* See § 514.11(c).

(D) *Governing Tariffs.* See § 514.12.

(E) ** Organization Record.* (This item is more directly available by filers who have the authority to edit the "Organization Record.") See § 514.11(a).

(vi) *Currency.* See § 514.10(c).

(vii) *Select Tariff.*

(viii) *New Access Date.* See § 514.10(a)(1).

(4) *Display Options.*

(5) *Filing Utilities* (filers only).

(6) *Exit Tariff System.*

(7) *V1.00 Information.*

(i) [Reserved]

(j) *Anti-rebate tariff notice.* To further implement the United States policy against untariffed rebates, as reflected in § 514.1(c)(1)(iii), the following notice will appear after logon to the ATFI system:

The foreign commerce carriers whose tariffs are recorded within this system have a policy against the payment of any rebate, directly or indirectly by the company or by any officer, employee or agent, which payment would be unlawful under the Shipping Act of 1984. Such policy has been certified to the Federal Maritime Commission in accordance with the Shipping Act of 1984. The shipping statutes also prohibit rebates in the domestic offshore trade.

(k) *Publication; paper copies of tariff material*—(1) *Publication*—(i) *Availability for inspection.* During normal business hours, every carrier, conference and terminal operator shall promptly make available to the public, in paper or electronic form, all tariff material required by this part to be filed by the carrier, conference or marine terminal operator, as well as all Commission actions affecting such tariff material, such as rejections, suspensions, etc. A reasonable charge, such as for a regular subscription, may be made for this service, except that domestic offshore carriers shall provide this service free of charge to the governor (or governor's designee) of any state, commonwealth or territory for domestic offshore tariffs pertaining to trades affecting the particular state, commonwealth or territory.

(ii) *Carrier facilities in domestic offshore commerce.* Every domestic offshore carrier, in addition to the requirements of paragraph (k)(1)(i) of this section, shall make available to the public at each facility at which it receives freight or passengers for transportation, or at which it employs a general or sales agent, all tariff material governing transportation to and from the facility in question.

(iii) *Assistance to the public.* Persons requesting to inspect tariff materials

shall, upon reasonable notice, be provided sufficient instruction or assistance to allow them to ascertain both the present and proposed rates, charges, classifications, Tariff Rules and practices of the tariff owner.

(iv) *Tariff Rule containing public access details.* Tariff filers shall set forth in detail in Tariff Rule 30 (§ 514.15(b)(30)) all costs, conditions and arrangements for public inspection of tariff material.

(v) *Official copies.* The official version of a tariff will be the version of any and all tariff objects published and effective on a specific date in the ATFI central site computer or the ATFI archives. Individual tariffs are accessible by registered ATFI interactive retrievers and by the public at terminals in the Commission's Tariff Control Center.

(2) *Certified paper copies of tariff material.* The Commission will publish paper pages containing filed tariff information only for special Commission requirements, e.g., for requested certification of tariff data by the Commission Secretary for official use in court and in other governmental proceedings under § 503.43(c) of this chapter and § 514.21(d). The pages produced for these purposes will not reflect the formats of traditional, page-based tariffs, but will present tariff objects in effect or filed to become effective on a specific date. The paper format may reflect the printing of a computer screen display or the retrieval and printing of a specific portion of a tariff in the ATFI database or the ATFI database archives.

(l) *Certification of batch filing software.* (1) The Commission will not make available to the public software packages for firms to use in formulating tariff filings. The Commission has released the "Batch Filing Guide" (with transaction sets) into the public domain so that qualified commercial firms can develop enhanced batch filing software for the general market.

(2) Certification. Firms which develop batch filing software, by appointment through BTCL and payment of the fee set forth in § 514.21, will be certified for submission of batch files to the ATFI system. The certification will require submission of tariff filing sessions to ATFI, with an evaluation of the actual results of the attempted filings to ensure that the transaction set formats are properly employed and that the filing results are consistent with the filer's expectations.

(m) *ATFI screens.* The sample screens used to illustrate tariff objects in this part simulate parts of, but are not the actual, completed ATFI screens used in the electronic filing and retrieval of tariff data, which may also change with technical or regulatory developments. Moreover, certain fields appearing on the actual ATFI screens may be blocked off from directly entering all or certain data in such fields, because of default procedures, developing and copying data from other, preliminary screens, etc. Accordingly, filers must carefully follow instructions in order to properly enter complete and accurate tariff data.

(n) *Validation of data.* Tariff data submitted to ATFI for filing are screened for compliance with ATFI conformity checks, and certain data not automatically rejected by the conformity checks are flagged for Commission examiner review.

(1) *Conformity checks.* The conformity checks are syntax checks, validity checks and associative checks. For interactive filing, the ATFI system will generally not accept tariff material which fails conformity checks and the on-line filer can immediately correct its proposed filing before final submission to the ATFI database. Commercially developed batch filing software can be designed to accomplish the same functionality. However, all proposed filings of tariff materials must undergo the routine system conformity checks before they can be received into the database. Filers will be notified of automatic rejections at this stage by electronic mail, with followup letter, if necessary. The conformity checks are:

(i) *Syntax Checks.* Tariff material will be checked for file integrity, proper data types, field lengths, and logical sequence according to the "Batch Filing Guide's" transaction sets. Data not conforming to the data element format or type in the "Batch Filing Guide's" Data Element Dictionary ("DED") and the sequence requirements of the transaction sets and segment definitions will result in rejections of submitted tariff data to include the possible rejection of an entire filing if form and format errors are extensive enough to preclude processing.

(ii) *Validity Checks.* Certain data elements of filed tariff material will also be checked for data validity by type against the DED's published reference tables, such as for container types and sizes, rate basis, and packaging. See § 514.13(b).

(iii) *Associative Checks.* The following are some representative types of associative checks performed by the ATFI system to check for logical conformity with established tariff filing rules.

(A) Any *new or amended tariff matter* must have:

(*1*) A valid organization number and name (§ 514.11 (b)(1)(ii) and (b)(2)).

(*2*) No suspended carrier or object status (See §§ 514.1(c)(1) and 514.19).

(*3*) Agent/individual authorized to make filing (§ 514.11(a)(9)(iii)).

(*4*) Filing date same as or prior to effective date (§ 514.10(a)).

(*5*) (Certain tariff matter.) Expiration date 30 days or more after filing date (§ 514.10(a)).

(*6*) Valid and appropriate filing/amendment codes (§ 514.9).

(*7*) Valid and appropriate filing, effective, thru and expiration dates (§§ 514.9 and 514.10(a)).

(*8*) When used, valid special case number and filing/amendment code *"S,"* with no other filing/amendment codes entered (§ 514.9(b)(19)).

(B) *Tariff records* (§ 514.11(b)) must have new (unique to carrier/conference/terminal) tariff number (§ 514.11(b)(1)(ii)).

(C) *Commodity description records* (§ 514.13(a)) must have:

(*1*) Complete textual description and unique number.

(*2*) At least one commodity index entry.

(*3*) Valid harmonized code.

(D) *Tariff line item (TLI)* records (§ 514.13(b)) must have a valid:

(*1*) Commodity description and code (§ 514.13(b)(5)).

(*2*) TLI code (§ 514.13(b)(6)).

(*3*) Origin and destination (§ 514.13(b)(15)).

(*4*) VIA PORT entry when origin or destination is not a port or port group (§ 514.13(b)(16)).

(*5*) Rate basis (§ 514.13(b)(17)).

(*6*) A specified rate (§ 514.13(b)(19)).

(E) Tariff Rules (§ 514.15(b)) must have:

(*1*) All mandatory rules.

(*2*) Number of new Tariff Rule not previously used in that tariff.

(F) *New or enlarged scope* (certain tariffs) must have effective date 30 days or more after filing date (§ 514.11(b)(10)).

(G) *Essential terms* (§ 514.17) must have:

(*1*) All mandatory terms (§ 514.17(d)).

(*2*) Availability date at least 30 days greater than the filing date (§ 514.17(d)(3)).

(*3*) All amendments filed with a special case number (§§ 514.7(k) and 514.9(b)(19)).

(2) *Flag for FMC examiner review.* In ATFI, electronic conformity checks cannot be designed to check and pass/fail every possible rejection situation, such as, for example, conflicting texts or ambiguous language. Other matters, such as filings of controlled carriers, require policy review under the 1984

Act. For these reasons, ATFI will automatically queue for review by a Commission examiner the items which survive the conformity checks described in paragraph (n)(1) of this section. The following are representative types of items flagged for examiner review:

(i) *Any new or amended tariff matter:* (A) Of a controlled common carrier.

(B) With a filing/amendment code of *"G," "K," "M," "P," "T,"* or *"X"* (§ 514.9(b)).

(C) When a special case number is present (§ 514.9(b)(19)).

(ii) All *tariff record* filings and amendments (§ 514.11(b)).

(iii) All new *commodity descriptions* (§ 514.13(a)).

(iv) *Tariff line item (TLI) records* (§ 514.13(b)):

(A) With any increase and the filing/amendment code does not contain an *"A"* or *"G"* (§ 514.9 (b)(1) and (b)(7)).

(B) With any non-rate data changes (§ 514.13(b)(17)).

(v) *All Tariff Rules* (§ 514.15).

(vi) *Location groups* (§§ 514.9(b)(16) and 514.10(b)):

(A) Any new group or addition to group.

(B) Any deletion of a group member.

(vii) *All service contract essential terms filings.* (§ 514.17).

(3) *Status/rejection codes.* The command line at the bottom of most ATFI screens provides a "Status" option for retrievers to determine whether an ATFI object is accepted, rejected, suspended, etc., and the reasons therefor. The DED "FMC Status/Rejection Code" provides numeric, two-digit codes for this purposes, e.g., "01—Not rejected; item accepted."

§ 514.9 Filing/Amendment codes and required notice periods.

(a) *General.* (1) Under the shipping statutes, various types of tariff material require different notice periods (beginning with the filing date) before they may become effective. For example, a new tariff or a rate increase usually requires 30 days' notice before the effective date. See § 514.4(a). Paragraph (b) of this section describes the different notice periods for the various types of filed tariff items and their corresponding filing/amendment codes (symbols), which shall be carefully entered by the filer for the purposes of guiding the user and triggering accurate associative checks to ensure the integrity of the filed tariff material. See § 514.8(n). The ATFI system makes available a *Help* screen which also lists the uniform symbols.

(2) *Multiple symbols.* Filed tariff material frequently can be coded with more than one symbol. Accordingly, the field, "Amendment Type," appearing on most ATFI screens, will usually allow up to three different, compatible symbols, but see paragraph (b)(19) of this section.

(3) *Symbol(s) resulting from deletion.* When amendments deleting existing tariff matter alter the amount paid by the shipper/consignee, the effect of this change shall be indicated by the proper code symbol(s), as required by paragraph (b) of this section.

(4) *Restricted use of symbols.* The codes or symbols prescribed in paragraph (b) of this section may not be used for any other purpose, nor shall any symbol be used other than the appropriate symbol(s) described in paragraph (b) of this section.

(5) *Essential terms and terminal tariffs.* Due to the absence of most of the notice requirements otherwise applicable to carrier or conference tariffs, the use of symbols under this section for terminal tariffs will be optional. Symbols for essential terms of service contracts under § 514.17 will usually be limited to "I" for initial filings and *"S"* for amendments.

(b) *Filing/Amendment codes and notice periods.* For tariffs in foreign and domestic offshore commerce, the following are the notice periods for various types of filings and their corresponding symbols. To the extent applicable and permitted by the ATFI system, the symbols can also be used in other types of tariff material, such as terminal tariffs.

(1) *"A" Increase (Not a general rate increase in domestic offshore commerce under paragraph (b)(7) of this section ["G"]): 30 days' notice*—(i)(A) Except for a general rate increase in domestic offshore commerce, amendments which provide for changes in rates, fares, charges, Tariff Rules or other tariff provisions resulting in an increase in cost, shall be filed to become effective not earlier than 30 days' after the date of filing, unless an exemption or special permission to become effective on less than said 30 days' notice has been granted by the Commission.

(B) With the filing of tariff material under this subparagraph, domestic offshore carriers shall simultaneously submit in paper format any supporting data required by part 552 of this chapter.

(ii) An amendment which deletes a specific commodity and rate applicable thereto from a tariff, thereby resulting in the application of a higher "cargo, n.o.s." or similar general cargo rate, is a rate increase requiring 30 days' notice under this subparagraph.

(2) [Reserved]

(3) *"C" Change resulting in neither increase nor decrease in rates or charges: effective upon filing.* (i) Amendments which result in no change in cost to the shipper, such as an amendment changing only the name or address of the filing party, may become effective upon filing; except that all changes to controlled common carrier tariffs may not become effective earlier than 30 days from the date of filing, unless special permission has been granted by the Commission under § 514.18, or the change affects only tariff matters which are the subject of a suspension proceeding under § 514.19 of this part.

(ii) An amendment containing a rate on a specific commodity not previously named in a tariff which results in no change in cost to the shipper may become effective upon filing, if:

(A) The tariff contains a "cargo, n.o.s." or similar general cargo rate which would otherwise be applicable to the specific commodity;

(B) The specific commodity rate is equal to the previously applicable general cargo rate; and

(C) The common carrier is not a controlled common carrier which has not received special permission or an exemption authorizing the amendment.

(4) [Reserved]

(5) *"E" Expiration: effective upon filing unless it results in an increase under paragraph (b)(1) "A" or (b)(7) "G" of this section.* When amendments deleting or expiring existing tariff matter alter the amount to be paid by the shipper/consignee, the effect of this change shall be indicated by other symbol(s) under this paragraph (b). Otherwise, expired or deleted matter, such as an amendment completely cancelling a tariff due to a cessation of all service by the carrier between the ports or points listed in the cancelled tariff, may take effect upon filing.

(6) [Reserved]

(7) *"G" General rate increase or decrease (domestic offshore commerce): 60 days' notice.* Amendments of domestic offshore tariffs which change rates, fares, charges, Tariff Rules, or other tariff provisions and which constitute a general increase or decrease in rates, shall be filed together with any supporting material required by part 552 and § 502.67 of this chapter at least 60 days prior to their effective date.

(8) [Reserved]

(9) *"I" New or initial matter: 30 days' notice*—(i)(A) New tariffs and, except for a general increase or decrease in domestic offshore commerce, filings which provide for new or initial rates,

fares, charges, Tariff Rules or other tariff provisions, shall be filed to become effective not earlier than 30 days after the date of filing, unless an exemption or special permission to become effective on less than said 30 days' notice has been granted by the Commission.

(B) With the filing of tariff material under this subparagraph, domestic offshore carriers shall simultaneously submit in paper format any supporting data required by part 552 of this chapter.

(ii) Initial filings of essential terms of service contracts under § 514.17 of this part may not use any symbol other than *"I."* See paragraph (b)(19)(iii)(A) of this section for corrections to essential terms.

(10) [Reserved]

(11) *"K" Rate or charge filed by a controlled common carrier member of a conference under independent action (foreign commerce): effective upon filing if decrease.*

(i) All changes to controlled common carrier tariffs may not become effective earlier than 30 days from the date of filing unless special permission has been granted by the Commission under § 514.18, or the change affects only tariff matters which are the subject of a suspension proceeding under § 514.19 of this part.

(ii) Conferences may file on behalf of their controlled common carrier members lower independent-action rates on less than 30 days' notice, subject to the requirements of their basic agreements and subject to such rates being filed at or above the level set by a member of the conference that has not been determined by the Commission to be a controlled common carrier subject to section 9 of the 1984 Act, in the trade involved.

(12) [Reserved]

(13) *"M" Transportation of U.S. Department of Defense cargo by American-flag common carriers under terms and conditions negotiated and approved by the Military Sealift Command ("MSC"). (Foreign Commerce): Effective upon filing.* Under § 514.3(b)(4), the following services are subject to continuing special permission authority to deviate from the 30-day-notice requirement of section 8 of the 1984 Act: Transportation of U.S. Department of Defense cargo by American-flag common carriers under terms and conditions negotiated and approved by the Military Sealift Command (MSC), if all the following conditions are met:

(i) Exact copies of all common carrier quotations or tenders accepted by MSC are filed with the Commission as soon as possible after they are approved by MSC, but no later than on the effective date;

(ii) The use of the filing symbol *"m"* is understood by the filer to mean that the tariff material filed is submitted in accordance with the requirements of the Shipping Act of 1984 and this part;

(iii) Tenders submitted for filing are to be consecutively numbered by the respective common carriers as part of a distinct tariff series; and

(iv) Amendments to tenders must also be filed with the Commission.

(14)–(15) [Reserved]

(16) *"P" Extension of service to additional port(s) at rates already in effect for similar services at the port(s) being added; or the carrier's establishment of additional terminal facilities at the port(s) already served, at the same rates as those currently applicable to comparable facilities of the carrier at the same port.*

(i) *In domestic offshore commerce:*

(A) Amendments extending actual service to additional ports at rates or fares already in effect for similar service at the ports being added may take effect upon filing; and

(B) Carriers may file to be effective upon filing amendments establishing additional terminal facilities for loading or discharging cargo at ports or harbors already served, but only if the rates to be charged at such facilities are the same as those currently applicable to comparable facilities of the carrier at the same port or harbor.

(ii) *In foreign commerce:*

(A) Amendments which provide for the addition of a port or point to a previously existing origin or destination field may become effective upon filing.

(B) A deletion of a port or point from a previously existing origin or destination field may not be coded with a *"P,"* but shall be coded with other appropriate symbol(s) under this section.

(17) [Reserved]

(18) *"R" Reduction (Not a general rate decrease in domestic offshore commerce under paragraph (b)(7) "G" of this section)*—(i) *Domestic offshore commerce (30 days' notice)*—(A) Except for a general rate decrease, amendments to domestic offshore tariffs which provide for changes in rates, fares, charges, Tariff Rules or other tariff provisions resulting in a decrease in cost, shall be filed to become effective not earlier than 30 days after the date of filing, unless an exemption or special permission to become effective on less than said 30 days' notice has been granted by the Commission.

(B) With the filing of tariff material under this subparagraph, domestic offshore carriers shall simultaneously submit in paper format any supporting data required by part 552 of this chapter.

(ii) *Foreign commerce.* Amendments which provide for changes in rates, charges, Tariff Rules, regulations or other tariff provisions resulting in a decrease in cost to the shipper may become effective upon filing; except that all changes to controlled common carrier tariffs may not become effective earlier than 30 days from the date of filing, unless special permission has been granted by the Commission under § 514.18, or the change affects only tariff matters which are the subject of a suspension proceeding under § 514.19 of this part.

(19) *"S" Special case matter: effective upon filing unless otherwise directed by the Commission.* Special case numbers will be developed and issued by the Commission and shall be entered by the filer, along with the symbol *"S."* Special case matter may not be filed with other types of amendments, including special case matter with other special case number(s). When filing special case matter, no filing/amendments codes other than *"S"* may be used. Special Case filings may arise from the following situations:

(i) Special permission under § 514.18.

(ii) Special Docket decision under § 502.92 of this chapter.

(iii) Correction or resubmission of essential terms.

(A) Correction under §§ 514.7(k) and 514.17.

(B) Resubmission after notice of intent to reject under § 514.7(j).

(iv) Filing to put tariff in order after rejection or overturning a rejection. (Except with the use of the *Thru-date* under § 514.10(a)(5), the ATFI system cannot by itself restore material that has been superseded or rejected, so the filer is required to make any filings to put its tariff in order, through the special case procedures, if necessary.)

(v) Filing of tariff data after suspension under § 514.19.

(vi) Other situations, as directed by the Commission.

(20) *"T" Terminal rates, charges or provisions or canal tolls over which the carrier has no control: effective upon filing.* Wherever a tariff includes charges for terminal services, canal tolls, additional charges, or other provisions not under the control of the common carrier or conference which merely acts as a collection agent for the charges, and the agency making such changes does so without notice to the tariff owner, such provisions may be changed in the carrier's or conference's tariff upon filing.

(21)–(23) [Reserved]

(24) *"X" Exemptions.* (i) Controlled carrier data in U.S. bilateral trades or in trades served exclusively by controlled carriers. (See § 514.3(a)(2).) A controlled common carrier shall use the symbol *"X"* for all tariff material filed under the following exempt situations:

(A) As to any particular rate, the controlled common carrier's tariff contains an amount set by the duly authorized action of a ratemaking body, except that this exemption is inapplicable to rates established pursuant to an agreement in which all the members are controlled common carriers not otherwise excluded by this paragraph;

(B) The controlled common carrier's rates, charges, classifications, Tariff Rules or regulations govern transportation of cargo between the controlling state and the United States (including its districts, territories and possessions); or

(C) The controlled common carrier operates in a trade served exclusively by controlled common carriers.

(ii) Domestic offshore carrier 1-day notice for decreases. The symbol *"X"* shall be used by domestic offshore carriers for all filings for which they have exemptions under § 514.3(d) to make tariff data effective on one day's notice.

(iii) Other situations involving an exemption or continuing special permission, as directed by the Commission.

(c) *Multiple amendments on same day.* All filings on the same date, with *different* effective dates, will be given effect by the ATFI system, whether or not they amend the same TLI. Where same-date filings to the same TLI have the *same* effective date, however, only the last filing on that date will be given effect and the previous filings on the same date will be presumed to be corrections and are, therefore, void.

(d) *Supplements.* "Supplements" to tariffs are prohibited. The ATFI system will electronically accommodate the necessary amendment of each TLI for general rate changes. Other matters, previously handled by supplements in traditional, page-based tariffs, will be handled procedurally and/or through Tariff Rules, TLI notes, etc.

§ 514.10 Other items used throughout ATFI.

(a) *Control dates and history.* Various control dates are used for tariff material filed in and/or retrieved from the ATFI system. The following partial screen illustrates these dates which are found on many ATFI screens and contains corresponding numbers keyed to explanatory and regulatory subparagraphs within this paragraph (in addition to "Today's date" which is the date of entry into the system and the screen). For special date provisions applicable to the essential terms of service contracts, see § 514.17 (d)(3) to (d)(5).

```
[§ 514.10(a)]        Today: 01Jan1992
    [Always Today's Date]

[(2)]          Filing date: 01Jan1992
[(3)]      Effective date: 31Jan1992
     [e.g., 30 days' notice]
[(5)]                thru: 01Mar1992
[(4)]     Expiration date: 01May1992
  [or TLI expires (etc).]
-----------------------------------
[(1)(i)]--   Access date: 01Jan1992
  [Today's date unless changed]
   [Could be changed to e.g.
    01Dec1991 or 01June1992]
[(1)(ii)  History  -Rev  +Rev
```

(1) (i) *Access date and history.* The default date for the Access date is "Today's date." Interactive ATFI, however, allows the user to set a different, desired access date for retrieving objects within the tariff. See § 514.8(h)(3)(vii). The system will select only tariff items that are in effect on the chosen access date. This allows the user to examine the tariff as it existed on a particular date in the past, or to examine rates and Tariff Rules which have a future effective date.

(ii) *History; −Rev; +Rev.* Similar to the functionality of the Access date, the following functions are also available on many ATFI screens:

(A) *History.* This function displays the entire list of modifications to a tariff item.

(B) *−Rev.* This function displays the previous revision (one revision at a time) of the tariff item just prior to the date displayed in the effective date field. See paragraph (a)(3) of this section.

(C) *+Rev.* This function displays the next (future) revision of the tariff item according to the date in the effective date field. See paragraph (a)(3) of this section.

(2) *Filing date.* The filing date, or the date any tariff or tariff element is processed by ATFI, is used to determine the beginning of the advance notice period required for various types of tariff material under § 514.9(b). The filing date is determined for each of the three basic types of filing, as follows:

(i) *Interactive.* The interactive filing system enters a filing date (current date) for every tariff object or tariff object update to be filed. Proposed objects with an outdated filing date will not be accepted by interactive ATFI. The day of filing is determined by the time of the "File all Authorized Changes" command at the completion of an interactive filing session and the "Sent" response from the system, indicating completion of that command at the ATFI central site, in local time in the U.S. Eastern Time Zone. The function "FileDate" (or "Default-Dates" or "Defaults") enables the user to update its proposed filing date to match the date of expected transmission of the proposed filing.

(ii) *On-line batch.* Filers will have a filing date automatically assigned to all tariff objects filed according to the time of the successful conclusion of transmission, U.S. Eastern Time Zone.

(iii) *In-bulk (tape) batch.* Filers will have a filing date assigned to all tariff objects filed according to the time of processing, following Time Zone.

(3) *Effective date.* The Effective date is the date upon which a filed tariff or tariff element is scheduled to go into effect by the filer. It determines the end of the advance notice period required for various types of tariff material under § 514.9(b). Specifically, a tariff provision becomes effective at 12:01 a.m. on the beginning of the effective date. In interactive filing, the Effective date can be changed through "FileDate," etc., as described in paragraph (a)(2)(i) of this section.

(4) *Expiration date.* The Expiration date is the last day, after which the entire tariff or tariff element (e.g., TLI), which is designated to expire, is no longer in effect. After midnight at the end of this day, the current version of the tariff will not include the expired object. In the screen example, the entire item (e.g., TLI) expires on May 1, 1992, leaving no specific rate, which could result in an increase to an NOS rate, for which advance notice from the filing date is required under § 514.9(b). The expired object becomes a part of the history objects for the tariff.

(5) *"Thru" date.* The Thru date is the date after which an amendment to a tariff element (e.g., TLI rate) is designated by the filer to be unavailable for use and the previously effective tariff element automatically goes back into effect. After midnight at the end of the Thru date, the previously effective tariff object will resume its effect. Thru-date tariff objects recognize and maintain the validity of the unexpired tariff objects they temporarily supersede during their time of effectiveness. In the screen example, the effective item reverts to the item prior to effectiveness on March 1, 1992, which goes out of existence when expired on May 1, 1992. Where an

increase requires an advance notice (e.g., 30 days) under § 514.9(b), a Thru-date item which is:

(i) A decrease when initially effective requires 30 days' notice from the Filing date to the Thru date, irrespective of when it becomes effective (no earlier than Filing).

(ii) An increase when initially effective requires 30 days' notice from the Filing Date to the Effective date, but may revert (Thru date) to the previous item on or after the Effective date.

(b) *Locations and groups.* The names of places entered by filers, such as in origin and destination scopes and TLIs, shall conform in spelling to, and will be validated by, ATFI glossaries.

(1) *Names*—(i) *Point names.* ATFI recognizes approximately 250,000 world place names.

(ii) *Port names.* ATFI recognizes ocean port names, using spellings concordant with the Point Names list, where there is a corresponding point name.

(2) *Location groups.* In the primary tariff, or in a governing tariff under § 514.12(a)(1)(ii), the filer will have the option to define and create groups of cities, states, provinces and countries (e.g. location groups) or groups of ports (e.g. port groups), which may be used in the construction of TLIs and other tariff objects in lieu of specifying particular place names in each tariff item, or creating multiple tariff items which are identical in all ways except for place names. A partial screen illustrating an origin port group follows:

```
[§ 514.10(b)(2)]
      ATFI LOCATION GROUPS
           Group:  US ATL. PORTS
     Port Group:  Y
 Origin or Dest:  O

    Location Group Locations:
 BALTIMORE (port), MD, USA
 BOSTON (port), MA, USA
 JACKSONVILLE (port), FL, USA
 MIAMI (port), FL, USA
 NEW YORK (port), NY, USA
```

(c) *Currency.* ATFI recognizes a large number of foreign currencies for rates and charges. The complete list of ATFI-recognized currencies is available on-line. Currency conversion rates are maintained and updated in ATFI on a periodic basis; except that these conversion rates are for comparison purposes only, not as official conversion rates for booking or billing. See § 514.8(h)(3)(vi).

(d) *Assessorials and algorithms*—(1) *Requirement.* Assessorial or accessorial charges, which are to be added to the basic ocean freight rate to determine the total cost to the shipper, shall be clearly shown through mathematical formulas or algorithms, as set forth in the "Batch Filing Guide" and, as further described in this paragraph. Assessorial charges should be contained in Tariff Rules of tariffs and essential terms publications (See §§ 514.15 and 514.17(b)), as well as in commodity descriptions and TLIs of tariffs and essential terms documents (See §§ 514.13 and 514.17(d)). Algorithms are not accommodated in the mandatory or optional terms of essential terms under § 514.17 (d)(8) and (d)(9).

(2) *Overview.* Algorithms are expressed as one or more condition and calculation statement sets. Each set reflects a separate possible condition which may apply, and the means of calculating a tariff additional charge for that condition. A set is composed of a group of condition statements, followed by a group of calculation statements. The allowable condition statements accommodate historically common criteria for the assessment of ocean freight and charges (e.g., "When Destination is 'New York'," "When Container Type is '40Ft'," etc.). These statements, in turn, accommodate historically common factors used in the computation of freight and charges (e.g., weight, volume, origin, container size, etc.).

(3) *Calculation statements.* The calculation statements include common arithmetic functions, including addition, subtraction, multiplication and division, as well as other operations, such as minimum and maximum functions:

(i) NOTHING (no calculation is performed).

(ii) <X> = <A>.

(iii) <X> = <A> + <B>.

(iv) <X> = <A> − <B>.

(v) <X> = <A> <B>.

(vi) <X> = <A> / <B>.

(vii) <X> = MAX (<A>,<B>).

(viii) <X> = MIN (<A>,<B>).

(ix) <X> = SELECT FROM <table>.

(x) <X> = SELECT FROM <table> USING <column>.

(4) *Screen illustration.* A partial screen (with pop-up help window), illustrating algorithms with multiple condition sets for a commodity desciption, follows:

```
[§ 514.10(d)(4)]
     ATFI COMMODITY DESCRIPTION

  Number    Commodity Description
 ┌─Assessorial Charge Calculation─┐
 │ DESC: House to House Surcharge │
 │                                │
 │CYCLE: 0 (Define RATING values- │
 │          wt, vol, etc.)        │
 │                                │
 │  SET: (1 of 2)                 │
 │ WHEN: SERVICE-TYPE is HH       │
 │  AND: RATE-BASIS is W          │
 │ THEN: RESULT =                 │
 │       RATED-WEIGHT x 3.75USD   │
 │                                │
 │  SET: (2 of 2)                 │
 │ WHEN: SERVICE-TYPE is HH       │
 │  AND: RATE-BASIS is M          │
 │ THEN: RESULT =                 │
 │       RATED-VOLUME x 5.00USD   │
 └────────────────────────────────┘
```

Between the two condition sets, there is an implied *"OR"* operator (weight *"OR"* measure). This means that either one or the other of these condition sets must be TRUE in order for the assessorial to apply. After entering the rated weight and volume in these condition sets, the system will process them in the order in which they appear, evaluating whether each is TRUE or FALSE. If TRUE, the assessorial is applicable to the shipment and will be entered onto the main screen where other potentially applicable assessorials (e.g., in different Tariff Rules) will also be processed.

(5) *Application.* For filing, a toggling (on or off) function provides specific application ("linking") of an assessorial to a commodity or Tariff Rule. For retrieving, applicable assessorials are added to the applicable TLI to find the overall cost for the shipment. Before shipment, however, there will be some condition sets where the values are not known (e.g., a surcharge for a non-scheduled port where the ship calls in an emergency and unloads the shipment). In these cases, assessorials cannot be accurately applied prior to booking or sailing.

§ 514.11 Organization and tariff records; tariff scope.

(a) *Organization record.* The organization record is the master record for all tariff information in ATFI for a specific firm. Each firm wishing to file tariffs or essential terms must complete and submit an ATFI User Registration Form (exhibit 1 to this part) under §§ 514.4(d) and 514.8(f). Upon Commission approval of organization registration in ATFI, a "shell" organization record, specific to the

requestor, is established and contains the organization number, organization name and organization type. The firm's authorized representative can then access the newly established organization record (see partial screen), using the limited access Logon ID and password for organizational record maintenance, to file the address for the firm's home office, and complete the affiliations, d/b/a, and publisher lists as appropriate. To maximize security of the data, maintenance (editing) of the organization record will be permitted only through the interactive mode. The following partial screen is indexed to subsequent, explanatory subparagraph (numbers) of this paragraph. As with all ATFI screens, filers shall enter complete and accurate data in all required fields.

```
[§ 514.11(a)]                                ATFI ORGANIZATION RECORD
                                                    XYZ, Inc.
     [(1)]          Org Number: 999999    Agreement #:
     [(2)]            Org Name: XYZ, Inc.
     [(3)]              Country of home office: USA

     [(4)]            Org type: NVOCC - NON-VESSEL-OPERATING COMMON CARRIER
     [(5)]          Controlled: N
     [(6)]           SCAC Code: XYZZ
     [(7)]                                Home Office Address Information
                       Street1: 201 Broadway
                       Street2: 72nd Floor
                          City: New York, NY, USA
                   Postal Code: 10007

                       Contact: Julian Xavier or Rick Zarones

                         Phone: (212) 555-1236
                           Fax: (212) 555-5678
     [(8)] ---------------------------------------------------------------------------
     [(9)]          Affiliations            dba's              Publishers
```

(1) *Org number and agreement number.* The organization and agreement numbers are generated by the Commission for the particular tariff owners. The agreement number is filled in only if the organization is an agreement (conference, etc.). The organization number is also used to verify whether a current anti-rebate certification has been filed under § 514.1(c)(1)(iii).

(2) *Org name.* e organization name (filled in by the FMC) is the official name of the firm (from the corporate charter, etc.), often a parent corporation, responsible for filing tariffs, often by several affiliates through d/b/a names. The Org Name is not changeable by the filer.

(3) *The country of home office* is the country in which the firm's headquarters is located.

(4) *Org type* would be ocean carrier, conference, NVOCC, etc.,

(5) *Controlled.* This field is filled in by the Commission and indicates whether the firm is a controlled carrier ("Y" or "N").

(6) *SCAC Code.* The Standard Carrier Alpha Code (assigned by the Motor Freight Association) further identifies the registered organization.

(7) *Home office address information.* A second line for street address is provided, if necessary, and names of contact person(s) shall be entered. Otherwise, the field is self-explanatory.

(8) *Command line.* While not shown on most screen illustrations in this part, the items and functions in (below) the command line provide instructions for accessing help screens, tables and other information relevant to the screen. The data required in paragraph (a)(9) of this section are found on separate screens which are accessed by highlighting the item and pressing *"ENTER."*

(9) (i) *Affiliations.* The affiliations are: members of a filing conference; participating carriers; or conferences to which a filing carrier belongs. As with the organization, itself, both the name and Commission-assigned number shall be listed.

(ii) *d/b/a's.* The d/b/a ("doing business as") names of affiliated firms are listed here. Filers shall ensure that the d/b/a's of all firms filing tariffs under the organization umbrella are accurately listed.

(iii) *Publishers.* Filers shall list all publishers used to file and maintain the organization's tariffs. Publishers will be assigned Org Numbers by the FMC which will be entered here.

(b) *Tariff Record.* The tariff record(s) for a specific organization registered under paragraph (a) of this section show the characteristics of each tariff. The ATFI system provides an index of all organization's tariffs from the data furnished in the Tariff Record. The following partial screen is indexed to subsequent, explanatory subparagraphs (numbers) of this paragraph. As with all ATFI screens, filers shall enter complete and accurate data in all required fields.

```
[§ 514.11(b)]                                  ATFI TARIFF DEFINITION
     [(1)]        Org Number: 999999                Tariff #: 001                Tariff Code: XYZZ001
     [(2)]          Org Name: XYZ, Inc.
     [(3)]             d/b/a: XYZ Line
     [(4)]             Title: XYZ Line Worldwide Commodity Tariff
     [(5)]       Tariff type: FC
     [(6)]        Tariff TON:   1 KT  or  1.000 CBM
     [(7)]   Monetary Units: USD US Dollar (USD)
                                                  Address Information
     [(8)]  (1 of 3)    Publishing Office
                          Name: XYZ Line
                       Street1: 201 Broadway
                       Street2: 65th Floor
                          City: New York, NY, USA
                  Postal Code: 10007

                       Contact: Maria Yates
                         Phone: (212) 555-1237
                           Fax: (212) 555-5678
     [(9)] ------------------------------------------------------------------------------------
     [(10)]            Origin          Destination
     [(8)]             Select Address
```

ins

(1)(i) *Org number* is the same is in paragraph (a)(1) of this section. This number cannot be changed by the filer.

(ii) *Tariff #* is a 3-digit number assigned by the organization to distinguish it from its other tariffs.

(iii) *Tariff code* uniquely identifies a tariff within the ATFI system. It consists of either the organization number plus the user-assigned tariff number (e.g. 999999–001) or the SCAC code (see paragraph (a)(6) of this section) plus the user-assigned tariff number, as in the illustration.

(2) *Org name* is the same as in paragraph (a)(2) of this section.

(3) The *d/b/a* name could be a name different from the organization name, but shall appear in the list of d/b/a's in the organization record under paragraph (a)(9)(ii) of this section.

(4) The *Title* of the tariff is assigned by the organization and could be as shown in the illustration.

(5) *Tariff Type* in the illustration is "FC" for "foreign commodity tariff" as set forth in the "Batch Filing Guide's" Data Element Dictionary.

(6) *Tariff TON* is the default (unless changed) measurement units throughout the tariff for both weight and volume, as codified in two tables of the "Batch Filing Guide's" Data Element Dictionary.

(7) *Monetary units* is the default (unless changed) currency unit to be used throughout the tariff. See § 514.10(c).

(8) (i) *Address information* is the same as in paragraph (a)(7) of this section, except that more than one address and contact person can be provided (see "Select Address" in Command Line), such as for the tariff publisher, the organization's tariff filing, billing and/or claims office, and an agent for service of process under paragraph (b)(8)(ii) of this section.

(ii) *Foreign-domiciled NVOCCs.* Every NVOCC not domiciled in the United States shall enter in the first address field provided in the tariff record the name and address of a person in the United States designated under § 514.15(b)(24)(ii) and § 583.5 of this chapter as its legal agent for service of judicial and administrative process, including subpenas.

(9) *Command line.* See paragraph (a)(8) of this section.

(10) *Scope: origin and destination.* The scope of each individual tariff is defined in more detail, in Tariff Rule 1 of the tariff (514.15(b)(1)), but entered in two specific location groups (see § 514.10(b)(5)(ii)) in the auxiliary screen for the tariff record. All other origin and destination ports and points filed in the tariff shall be within the geographic scope of the regions and/or countries defined in the tariff record scope.

(i) *Origin scope.* The origin scope is a single location group or port group in a tariff encompassing the allowable origins for TLIs defined in that tariff.

(ii) *Destination scope.* The destination scope is a single location group or a port group in a tariff encompassing the allowable destinations for TLIs defined in that tariff.

(iii) *Between tariffs.* The filer may insert a statement in the scope fields that the rates and charges, etc. are between two location groups, but shall create separate origin and destination pairs, as well as TLIs, for each direction.

(iv) *Ports and/or points.* A tariff with origin and destination groups containing only ports will be a port tariff only; no onward through intermodal rates will be allowed. A tariff with non-port cities, states, or country names in either the origin or destination group will be eligible to contain intermodal rates under § 514.14.

§ 514.12 Governing and general reference tariffs.

Governing and general reference tariffs may not contain commodity descriptions or tariff line items (TLIs). See § 514.13. Where any matter directly affects a TLI, it must be filed in electronic form in the appropriate tariff in the appropriate place.

(a) *Governing tariffs (filed electronically).* A filer which files multiple tariffs with duplicative and/or commonly applicable items, such as Tariff Rules or inland rate tables, may file a governing tariff which contains, and is referred to in the governed tariff as a source for, tariff line items (TLIs), including assessorial charges, which are applied as if they were a part of the governed tariff.

(1) *Types.* Due to ATFI's "linkage" design feature, whereby tariff items, such as commodities and TLIs, can be electronically referenced and made applicable from one tariff to another, a filer may create and use only the following types of governing tariffs, or combinations thereof, which shall accompany governed tariffs in the ATFI electronic format and will not constitute "separate" tariffs for the purpose of the remote retrieval limitation of "one tariff at a time" (see § 514.20(a)(1)(ii)):

(i) *Rules tariffs*, including Hazardous Cargo Tariff Rules and/or other Tariff Rules which contain assessorial charges (see § 514.15(b));

(ii) *Location group tariffs* (see § 514.10(b)(2));

(iii) *Inland rate table tariffs* (see § 514.14(c));

(iv) *Bill of lading tariffs* (see § 514.15(b)(8));

(v) *Essential terms publications* under § 514.17(b) (solely for essential terms documents); and

(vi) *Tariffs of general applicability* under § 514.17(b)(2) (solely for essential terms publications).

(2) *Creation and link to governed tariff.* Governing tariffs shall be created by using ATFI's standard tariff creation function and referenced in each governed tariff, using the "Governing Tariff" function under § 514.8(h)(3)(v)(D), where the list of governing tariffs may be accessed.

(3) *Conflicts between governing and governed tariffs.* A Tariff Rule affecting a TLI or passenger fare may appear in only one governing tariff. See § 514.4(b)(3)(iv). Filers shall ensure the exclusive and accurate application of tariff matter contained in governing and governed tariffs to every TLI contained in the governed tariff, as illustrated by the following:

(i) *Application of Tariff Rules and associated assessorial charges.* Tariff Rules, and any assessorial charges within the Tariff Rules, from both the governed tariff and the governing tariff, will automatically apply to any shipment, unless the Tariff Rules in either or both tariffs are "turned off," using system-assessorial-charge-application flags to disable the charge application, which will indicate the "Yes" or "No" status to the users of the central site system. Unless "turned off," duplicative, redundant, or overlapping assessorial charges could apply to shipments, because the ATFI central site applications will not deconflict like-type assessorial charges. Where the non-rate-affecting Tariff Rules' texts conflict between governing and governed tariffs, the governed Tariff Rules will prevail.

(ii) *Location groups.* Location groups from both governed and governing tariffs will apply to any shipment, unless both tariffs include a group with the same name. In this case, if not corrected or accommodated by the filer, the location group from the governed tariff will take precedence and the governing tariff location group of the same name will be ignored.

(b) *General reference tariffs (in paper format).* Certain tariffs, other than governing tariffs described in paragraph (a) of this section, are general reference tariffs and, if they do not contain assessorial charges or other matters affecting the TLI, will continue to be "on-file" at, or accepted by, BTCL, in paper format. General reference tariffs are usually compiled by firms (with FMC-assigned Org Numbers) other than those required to file ocean freight tariffs, and are allowed to be cross-referenced in the electronically-filed tariffs. General reference tariffs include:

(1) *Hazardous Cargo Rules Tariffs*, not containing rates or charges (see § 514.15(b)(16) and paragraph (a)(1)(i) of this section);

(2) *Equipment Registers;* and

(3) *Equipment Interchange Tariffs.* (i) Equipment interchange tariffs may be filed in electronic format under this part, or, in paper format, arranged in the following order:

(A) Title Page.

(B) Check Sheet (optional).

(C) Table of Contents.

(D) Explanation of Symbols, Abbreviations and Reference Marks.

(E) Tariff Rules.

(F) Free Time and Charges—List of Exceptions to Standard Free Days and/or Charges.

(ii) The Tariff Rules section of the equipment interchange tariff shall include Tariff Rules 1 (Scope, § 514.15(b)(1)) and 21 (Use of Carrier Equipment, § 514.15(b)(21)). Other unused mandatory Tariff Rules in § 514.15(b) shall be noted as "Not Applicable." Equipment interchange tariffs need not reference carrier or conference rate tariffs.

§ 514.13 Commodities and tariff line items ("TLIs").

In ATFI, commodities and rates (TLIs) are created separately for system reasons, but each TLI under paragraph (b) of this section shall be associated with, applicable to, and subsumed under, an already existing, specific commodity under paragraph (a) of this section. There may be many TLIs applicable to one commodity. The ATFI system will assign a different four-digit code for every TLI applicable to a particular commodity as a suffix to the one 10-digit commodity code, created by the tariff owner under paragraph (a)(3) of this section.

(a) *Commodities*—(1) *The Harmonized System (HS)*—(i) *General.* In HS, the first two digits identify the chapter. The basic commodity chapters are numbered from "1" to "97." Each chapter is divided into several commodity headings. The second two HS digits identify the heading. Each heading is divided into several commodity subheadings. The third two HS digits identify the subheading. Finally, four more digits (digits 6–10) can be used to further classify commodities within the HS chapter, heading and subheading.

(ii) *Requirement to use HS.* Commodity descriptions and codes for tariff material filed under this part shall conform to the HS descriptions and associated codes, as further described in this paragraph.

(2) *Commodity description*—(i) *General requirements.* (A) Commodity descriptions shall accurately describe the specific article(s) to be shipped, and include well-known synonyms and alternate names, e.g., "Salt, rock salt, sodium chloride."

(B) Commodity rates shall be specific and may not apply by implication, or otherwise, to analogous articles.

(C) Commodity descriptions shall include dimensions and weights for cargo rated on an "Each" basis, when the packaging is non-standard (e.g., vehicles, machinery) and the rate basis is "Each" ("EA"). See paragraph (b)(17)(ii) of this section.

(D) Commodities subject to minimum quantity requirements for carriage or rating shall include a clear statement of such requirements in the commodity description to which they apply. See also Tariff Rule 11 (§ 514.15(b)(11)).

(ii) *Prohibitions.* Unless provided in the HS, trade names, trade marks, functional descriptions which omit the name of the article, and distinctions based on intended end use when the articles are identical, are prohibited, e.g., (for salt): "Water softening agents."

(iii) *Consistency with HS descriptions.* Each commodity description shall be consistent with the corresponding HS description for the particular code or parts of the code used under paragraph (a)(3) of this section.

(iv) *Exclusions; special provisions.* In the commodity description record, filers shall list commodities excluded from the commodity description and provide notes to articulate any special provisions that may apply to the commodity description, e.g., where a commodity is subject to time/volume, open or independent-action rates, as described in paragraph (b)(19) of this section.

(v) *Assessorial charges applicable to commodity.* Assessorial charges (see § 514.10(d)) that are specific to a described commodity shall be applied to the commodity by creating the desired assessorial charge condition sets in the commodity description record.

(3) *Classification under the HS code.* Commodities, as described under paragraph (a)(2) of this section, shall be classified as specifically as possible

under the HS, in a manner which conforms the product under substantive, rather than simply textual, criteria. For the first six digits of the 10-digit ATFI commodity code, filers may not use other codes not found in the HS, but shall use the modified HS and special ATFI codes described in this paragraph. The remaining system four digits are to be user supplied, but different commodities may not have the same 10-digit number.

(i) *Six-digit code applicable to commodity.* If the commodity description established by the filer coincides with an HS description at the (first) six-digit classification level, the six-digit code shall be used, e.g., "9503.10—Electric trains."

(ii) *Six-digit code inapplicable to commodity.* When the commodity description established by the filer does not fully coincide with any (first) six-digit description in the HS, as provided in paragraph (a)(3)(i) of this section, and it would be inaccurate to describe it using a six-digit classification, only that part of the HS classification that is applicable to the filer's commodity description may be used, as follows:

(A) *Four digits.* If a commodity can be classified only by HS chapter and heading, then the filer shall use the correct chapter and heading digits (digits 1–4), and the subheading digits (digits 5–6) shall be filled in with "00," e.g., "9501.00—Wheeled toys, n.o.s."

(B) *Two digits.* If a commodity can be classified only by the chapter (digits 1–2), then the heading and subheading digits (digits 3–6) shall be "00.00," e.g., "9500.00—Toys, n.o.s."

(iii) *Mixed commodities and mixed lots.* (A) Except for project rates under paragraph (a)(3)(iv) of this section, mixed commodities, to the extent not accommodated by the "00" approach described in paragraph (a)(3)(ii) of this section, will require the ATFI code: "9900.00," and will include situations involving:

(*1*) *One specific commodity description which includes several commodities classified in more than one HS chapter,* e.g., "Footwear" or "Footwear, n.o.s." (various types or parts of which are contained in HS chapters 44, 64, 83, 90 and 98); or

(*2*) *"Mixed commodities" (semble),* as a commodity description, which includes several commodities with different HS codes, but only if all commodities included within the description are specifically listed with their individual HS codes.

(B) Where specified proportions of certain mixed commodities or other conditions are required to comply with the description or to be eligible for a particular TLI associated with the description, the specific proportions and/or conditions shall be set forth specifically for the commodity, and/or in a Tariff Rule under § 514.15, as applicable.

(iv) *Projects (for "Project Rates").* A "Project" commodity description for project rates (TLIs) includes materials and equipment to be employed in the construction or one-time development of a named facility used for a major governmental, charitable, manufacturing, resource exploitation, public utility or public service purpose, and also includes disaster relief projects. Such construction or development must be undertaken by either the shipper or consignee named on the bill of lading and none of the materials or equipment covered shall be transported for the purpose of resale or other commercial distribution. Any "Project" will require the ATFI code: "9800.00" and the commodity description record shall include:

(A) An exact description of the project which demonstrates that it is qualified for a "project rate" under paragraph (a)(3)(iv) of this section.

(B) A list of the commodities, with specific HS codes, to be transported under the project rate.

(C) A statement that only proprietary materials actually employed in the project are eligible for the project rate. The filer shall provide for the use of a bill of lading clause on all project rate cargo, which shall state that:

All materials included in this bill of lading are of a wholly proprietary nature and shall not be resold or otherwise commercially distributed at destination.

(D) For domestic offshore carriers, a statement that the project rate will cover the carrier's variable costs and contribute to its fixed expenses.

(v) *Codes for non-commodity categories.* A TLI may be applicable to all commodities, or all commodities of a class, on which specific commodity descriptions are not stated, such as "cargo, n.o.s." (not otherwise specified), "general cargo," "freight—all kinds," or other identifying name. Because the ATFI system requires TLIs to be associated with and subsumed within a commodity, TLIs not directly involving specific commodities must have a "commodity code." Therefore, TLI rates, such as "FAK" and "NOS" (entire tariff) will require the first six digits of the "commodity code" to be "0000.00."

(4) *Commodity index.* (i) Each commodity description created under this section shall have at least one similar index entry which will logically represent the commodity within the alphabetical index. Filers are encouraged, however, to create multiple entries in the index for articles with equally valid common use names, such as, "Sodium Chloride," "Salt, common," etc.

(ii) If a commodity description includes two or more commodities, each included commodity shall be shown in the index.

(iii) Items, such as "mixed commodities," "projects" or "project rates," "n.o.s" descriptions, and "FAK," shall be included in the commodity index.

(b) *Tariff Line Items ("TLIs")*—(1) *General requirements.* (i) All rates and charges shall be stated in a systematic and straightforward manner. Rates, charges, Tariff Rules, regulations or classifications may not be duplicative, conflicting or otherwise ambiguous when compared with items in the same tariff or in any other tariff to which the publishing filer is a party.

(ii) The minimum TLI requisites are a valid, accepted commodity description to which the TLI is applicable, valid filing and effective dates, origin and destination locations or location groups within the scope of the tariff, a rate, rate basis, and service designation.

(2) *Illustrative screen.* (i) As with all ATFI screens, filers shall enter complete and accurate data in all required fields. The information shown on the simulated screen is actually entered on the "ATFI NEW (Commodity) DESCRIPTION CREATION" and "ATFI NEW TLI CREATION" screens, but when completed, is displayed on the following partial screen, which is indexed to explanatory subparagraphs (numbers) of this paragraph. An asterisk (*) before an item indicates that the particular field is *NOT* required to be completed, except when the situation requires it (e.g., special case number, or when an entry is required to distinguish the TLI from another TLI within the same commodity).

(ii) Where an optional TLI screen field (*) is filled in, the TLI will apply only to shipments that comply with the condition, e.g., where the packaging type is "Crate (CRT)," then only to the particular commodity as crated. Otherwise, if the packaging code is left blank, the TLI would apply to all shipments of the particular commodity, irrespective of the package type.

```
[§ 514.13(b)(2)]                    ATFI TARIFF LINE ITEM DETAIL                    Today: 01Jan1992
    [3]                    XYZ Line Worldwide Commodity Tariff    [4]  ( XYZZ001 )
    [5]  9503-10-0010  Electric trains
    [6]  TLI #: 9503-10-0010-0001            [7]  Filed: 01Jan1992              [8]  Amendment Type: R
    [9]  Effective: 01Jan1992        [10] *  thru            [11]  * Expires:    [12]    * Spcl Case:
    [13]                   Tariff Line Item Detail: [14]  Rates per Container Load
    [15]        From:   US ATLANTIC PORTS                          [16] * VIA
                  To:   PARIS, FRANCE                                  * VIA   ANTWERP, BELGIUM

    [17]  Rate Basis: PC (Per Container) 40/PC                     [18]   Units:  USD - US Dollars
    [19]     Rate(s): 2,310.00 USD                                             Ton - 1 KT or 1.000 CBM

    [20]   * Service: PH - Pier/House
    [21]   * Carrier:
    [22] * Packaging: CRT                                          [23]     * Ctr size:  40
    [24] * Stow Code: BS                                           [25]     * Ctr type:  PC
    [26] * Stat Code: 030817                                       [27]     * Ctr temp:  NA

    [28]   TLI Notes:   Rate applies on direct vessel call to Antwerp and oncarriage by truck to Paris

    [29]  ================================Applicable Assessorial Charges=====================================
          Desc Local:      Paris surcharge
                Rule: 6    Min B/L charge
                Rule: 7    CAF
```

(3) *Tariff title.* See § 514.11(b)(4).

(4) *Tariff code.* See § 514.11(b)(1)(iii).

(5) *(Commodity number and description.)* The screen's description corresponds with the HS description for the 6-digit HS code used, as described in paragraph (a)(3)(i) of this section.

(6) *TLI #.* The 14-digit TLI number consists of the commodity code (first ten digits), as described in paragraph (a) of this section, plus four unique *suffix* TLI digits assigned by the ATFI system to differentiate TLIs within a commodity. For example, the TLI *suffix* of "0001" in the screen is based on a 40-foot container; the *suffix* "0002" could be based on a different TLI for a 20-foot container.

(7) *Filing date ("Filed").* See § 514.10(a)(2).

(8) *Amendment type.* The symbol *"R"* stands for a reduction under § 514.9(b)(18).

(9) *Effective date ("Effective").* See § 514.10(a)(3). Since the screen amendment is a reduction in foreign commerce and the filer is not a controlled carrier, it can take effect upon filing. See § 514.9(b)(18).

(10) *Thru (date).* See § 514.10(a)(5). *Special* or *emergency rates* may be filed as thru-date TLIs, ith explanation of the rates in the TLI notes, but only if the TLI notes are explanatory, without affecting the level of the rate.

(11) *Expiration date ("Expires").* See § 514.10(a)(4).

(12) *Special case (number).* The special case number (not applicable in the illustration) is assigned by the Commission. See § 514.9(b)(19).

(13) *Tariff Line Item Detail.* This section contains the routing, shipment, rate data, etc.

(14) *Rates per Container Load.* This field echoes the rate basis under paragraph (b)(17) of this section.

(15) *Origin/destination.* The origin and destination of the shipment can be a location point or group under § 514.10(b), but must be within the tariff scope under § 514.11(b)(10).

(i) *Between TLIs prohibited.* Every TLI shall have but one origin and destination and may not purport to show the same rate in both directions. See § 514.11(b)(10)(iii).

(ii) *U.S. to/from foreign country.* In foreign commerce, the origin may not include any port or point within the same country in the destination (including the United States).

(16) *"VIA."* "VIA" indicates the port through which the cargo will be carried, outbound from its origin, and inbound to its destination, for intermodal through transportation from and/or to an inland point. In the illustration, the TLI includes all rates and charges for the inland portion from Antwerp to Paris and is, therefore, a "through rate." See § 514.14. However, where neither the origin nor the destination is an inland point (i.e., both are ports), "VIA" or "VIA ports" may not be entered and the TLI will be a port-to-port rate. In the latter case, inland combination rates may still apply by adding the appropriate combination rate from an inland rate table under § 514.14(c) to the TLI.

(17) *Rate basis.* In the illustration, the rate basis is "PC (Per Container)" under the "Batch Filing Guide's" Data Element Dictionary ("DED") code. Regulations for other rate bases include:

(i) *AV.* When an *Ad Valorem ("AV")* TLI is published, the filer shall include in the applicable assessorial charges (in commodity description, TLI or Tariff Rule) the algorithm(s) showing the exact method of computing the charge (e.g., shipper's declaration, invoice value, delivered value), and, in Tariff Rule 12 (§ 514.15(b)(12)), the additional liability, if any, assumed by the common carrier in consideration therefor.

(ii) *EA.* TLIs published on an "Each" basis shall include specific provisions in Tariff Rule 2, Application of Rates (§ 514.15(b)(2)), for the applicable sizes and dimensions of general packaging units (e.g., barrels, crates, cartons under paragraph (b)(22) of this section) when the number of these packages is the basis for the calculation of freight. Commodity descriptions shall include dimensions and weights for cargo rated on an "Each" basis, when the packaging is non-standard (e.g., vehicles, machinery) and the rate basis is "Each" ("EA").

(iii) *W.* For green salted hides in foreign commerce rated on a weight ("W") Basis, see Tariff Rule 17 (§ 514.15(b)(17)).

(iv) *WM.* (A) *Whichever is greater.* TLIs published on a weight or measure ("WM") basis shall be presumed to mean that the basis generating the greater revenue to the carrier will apply. Filers wishing to publish rates based on the lesser revenue of the two alternate bases shall construct Tariff Rules and

assessorials which reflect this method of rate computation. Tariff Rule 2, Application of Rates (§ 514.15(b)(2)), shall set forth the carrier's intentions in detail.

(B) *Autos in domestic offshore commerce.* If not rated on an "EA" basis under paragraph (b)(17)(ii) of this section, automobiles in domestic offshore commerce may not be rated on either weight *or* measure, whichever is greater (lesser), but only on one of these bases, and, in addition to using the appropriate rate basis code ("M" or "W"), the TLI Notes shall reflect the appropriate controlling formula, as follows:

(*1*) *Automobiles rated by measure ("M").* The cubic measurement for the five most recent model years shall be that prescribed by the manufacturer of the particular make and model as shown in Tariff Rule 22 (§ 514.15(b)(22));

(*i*) Automobiles whose measurements are not shown in Tariff Rule 22 shall be individually measured by the carrier. This fact shall be noted on the bill of lading; and

(*ii*) Automobiles which, because of additional accessories or equipment, vary in dimensions from the standard measurements shown in paragraphs (b)(17)(iv)(B)*(1)*, introductory paragraph, and (b)(17)(iv)(B)*(1)(i)* of this section, shall be individually measured by the carrier. This fact shall be noted on the bill of lading along with the actual variation (in cubic feet) from the standard measurements; or

(*2*) *Automobiles rated by weight ("W").* Each automobile tendered for shipment shall be individually weighed on the carrier's scale. Where the carrier does not possess weighing facilities, the shipper shall have the vehicle weighed by a certified weighmaster and furnish the weighmaster's signed statement to the carrier.

(18) *(Default) Units (of weight/measure.)* The application of all rates and charges shall be clear and definite and explicitly stated per cubic foot, cubic meter, kiloton, kilogram or pound, or specified numbers of such units. The filer has defaulted its tariff to U.S. dollars. See paragraph (b)(19) of this section. The example in the illustration shows default units of "1 KT" or "1000 CBM," which were originally set by the filer in the Tariff Record under § 514.11(b)(6). (The default units are not applicable to the illustrated TLI, which is on a "Per Container" basis, but see paragraph (b)(17) of this section.)

(19) *Rate.* The rate is the base ocean freight rate to ship the commodity and, in the illustration, is defaulted to U.S. Dollars which can be changed by the filer. See paragraph (b)(18) of this section and § 514.10(c). The commodity description under paragraph (a)(2) of this section, and the TLI, by symbol or TLI note, as appropriate, shall clearly identify and explain the following types of rates and the commodities to which they are applicable:

(i) *Time/Volume rates in foreign commerce.* A time/volume rate means a rate published in a tariff which is conditional upon receipt of a specified aggregate volume of cargo or aggregate freight revenue over a specified period of time.

(A) Time/volume rates may be offered by common carriers or conferences and shall be published as TLIs. If a time/volume rate is intended to refer to multiple commodity descriptions (see paragraph (a)(2)(iv) of this section), each subsidiary TLI shall indicate the specific commodity to which the TLI refers.

(B) All rates, charges, classifications, Tariff Rules and practices concerning time/volume rates must be set forth in the appropriate tariff items, e.g., commodity description, TLI, and/or Tariff Rule 26 (§ 514.15(b)(26)), which shall identify the shipment records that will be maintained to support the rate.

(C) Once a time/volume rate is accepted by one shipper, it shall remain in effect for the time specified, without amendment.

(D) Any shipper utilizing a time/volume rate must give notice to the offering carrier or conference of its intention to use such a rate prior to tendering any shipments under such an arrangement. Notice may be accomplished by any effective method deemed appropriate by the offering carrier or conference and set forth in Tariff Rule 26, and cross-linked in the commodity record and/or TLI Notes.

(ii) *Open rates in foreign commerce.* An open rate in foreign commerce means a rate on a specified commodity or commodities over which a conference relinquishes or suspends its ratemaking authority, in whole or in part, thereby permitting each individual ocean common carrier member of the conference to fix its own rates on such commodity or commodities. See § 514.15(b)(15).

(A) In the conference tariff, where all TLIs for a given commodity description are opened, the description and commodity index under paragraph (a) of this section shall include the appropriate notation, i.e., the word "OPEN." Where a conference opens a rate at the TLI level, the TLI shall show the rate as "0.00" and the TLI Note shall contain the appropriate "OPEN" notation. Both commodity description and TLI Note of "opened" rates (where applicable) shall refer to Tariff Rule 15 (§ 514.15(b)(15)) which shall clearly define the word "open," as used in the tariff, and indicate where the rates of the individual conference member lines on such items may be found.

(B) Where a conference opens rates pursuant to paragraph (b)(19)(ii)(A) of this section, an individual conference member may not charge rates on the open item unless and until the individual member files a proper tariff rate covering such item, as required by this part. This may be accomplished by the individual common carrier member (or its tariff agent) filing a complete tariff pursuant to this part, or by the conference (or its tariff agent) filing a separate open-rate tariff, indicating the rates which will be charged by each individual common carrier and the governing Tariff Rules and provisions of the conference tariff applicable to each common carrier. When conference members publish their open rates in a separate tariff, such tariffs shall identify the conference tariff in which the open-rated condition is reflected.

(C) Controlled common carriers filing open rates are subject to the 30-day controlled common carrier notice requirement of § 514.4(c)(1)(iii), except when special permission is granted by the Commission under § 514.18.

(D) Notwithstanding paragraph (b)(19)(ii)(C) of this section, a conference may, on less than 30 days' notice, file reduced rates on behalf of controlled common carrier members for open-rated commodities:

(*1*) At or above the minimum level set by the conference; or

(*2*) At or above the level set by a member of the conference that has not been determined by the Commission to be a controlled common carrier subject to section 9 of the 1984 Act, in the trade involved.

(iii) *Independent-action rates in foreign commerce.* Each conference agreement must provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of the 1984 Act upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective not later than 10 calendar days after receipt of the notice, and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date, in lieu of the existing conference tariff provision for that rate or service item. For controlled common carriers, see §§ 514.4(d)(4)(iii) and 514.9(b)(11).

(20) *Service.* Under the DED codes, the example indicates that the service will be "PH—Pier/House."

(21) *Carrier.* In a conference tariff, the "Carrier" field is filled in with the SCAC code (under § 514.11(a)(6)) of the carrier, when the TLI is an independent action of the carrier member of a conference or an open rate of the conference to which the carrier belongs (not applicable in illustration). See paragraph (b)(19) of this section.

(22) *Packaging code.* Under the DED, the illustration's packaging code is "CRT" (Crate). See paragraph (b)(2)(ii) of this section.

(23) *Container size.* The example container size is 40-foot, using the DED code.

(24) *Stow code.* Under the DED, the illustration's stow code is "BS" (Bottom Stowage.)

(25) *Container type.* Under the DED codes, the example indicates that the container type to be "PC" (Dry).

(26) *Stat code.* The statistic code is a numeric field which is provided for convenience to the tariff owner for statistical purposes. The field can handle up to 20 digits.

(27) *Container temperature.* Under the DED code, the illustration's container temperature requirement is "NA" (Not Applicable.)

(28) *TLI notes.* The TLI notes contain facts or circumstances which pertain to the particular rate. Additional rates, conditions which directly affect the rate, or assessorial charges *may not* be contained in the TLI notes, but shall be entered in the appropriate place, such as in the "Applicable Assessorial Charges" under paragraph (b)(29) of this section, or in inland rate tables under § 514.14(c).

(29) *Applicable assessorial charges.* Any matter directly affecting the rate, such as assessorial charges, shall be entered in the Applicable Assessorial Charges field, as described in § 514.10(d). The illustration shows a (Paris) surcharge and two assessorials found in and linked to Tariff Rules.

(c) *TLI calculation.* ATFI's calculation feature determines which potential assessorials apply and these and inland rate charges are added to the basic ocean freight to compute the bottom line (total) freight. For a TLI calculation, as with most other ATFI operator functions, the ATFI user manual (§ 514.8(b)) is almost indispensable. The basic steps for the calculation are:

(1) Retrieve a TLI, such as the example in paragraph (b) of this section.

(2) Exercise the *"Calc"* option and an "ATFI RATE CALCULATION" screen appears. It is very similar to the ATFI TARIFF LINE ITEM DETAIL screen in paragraph (b) of this section, except that the retrieving operator enters the actual shipment data in the appropriate fields. For the basic ocean freight rate and each item that may be added to it to find the overall cost, a proof screen may be used after the calculation. Once these data are entered and verified, the operator presses another *"Calc"* key and a screen similar to the following partial screen illustration appears ("ATFI RATING RESULTS") and shows the "Total Charges" ("bottom-line freight"):

```
[§ 514.13(c)(2)]
        ATFI RATING RESULTS
 XYZ Line Worldwide Commodity Tariff
            ( XYZZ001 )

Commodity:  Electric trains
     TLI: 9503-10-0010-0001

Actual weight: 0.000 KT
Actual volume: 0.000 CBM

===  Establishing Rating Values ===

Freight Basis is  PC
Shipment Freighted as  1 CTR

===      Beginning Rating        ===

Net Ocean Charges        2,310.00 USD
                 - - - - - - - - - -
Gross Ocean Charges      2,310.00 USD
Paris surcharge            250.00 USD
CAF                        163.26 USD
                 - - - - - - - - - -
      Total Charges      2,723.26 USD
```

(3) The bottom-line rate calculation facilitates estimation of the total charges for the shipment. However, "Total Charges" may not always be the freight paid by the shipper because of operator error or other variables.

§ 514.14 Intermodal and transshipment services; inland rate tables.

(a) *General*—(1) *Intermodal transportation.* This section contain special provisions applicable to carriage by common carriers in foreign and domestic offshore commerce when it involves an inland point beyond the port terminal area at which the vessel calls, and continuous service for the inland portion by a different participating carrier, such as a railroad, barge, or truck. A TLI for such service may simply be for the overall (through) rate (in foreign commerce), as illustrated in § 514.13 (b)(16) and (b)(19), or be a port-to-port (proportional) rate, to which is added an inland rate, for a resulting combination rate. For the latter, filers may utilize inland rate tables in the primary tariff or in a governing tariff under § 514.12(a) of this section.

(2) *Transshipment.* This section also contains special provisions applicable to transshipment arrangements between water carriers, one of which is a common carrier in foreign or domestic offshore commerce, whereby there is physical transfer of cargo (or passengers in domestic offshore commerce) from one carrier to another in the course of the port-to-port portion of the transportation from origin to destination.

(3) *Substituted service.* This section does not apply to substituted service, as defined in § 514.2.

(b) *Special requirements for intermodal and transshipment service.* The regulations of this section which are applicable to tariffs containing rates, charges, Tariff Rules and regulations for intermodal transportation or transshipment are additional requirements for use only for these services and are not a substitute for any other requirements of this part.

(1) *Commodity and TLI.* Every TLI involved in intermodal or transshipment services shall be accompanied by all information required under § 514.13.

(2) *Origin, destination and via port.* Origin, destination and, where applicable, VIA PORT data are required for each TLI and inland rate table, using locations under § 514.10(b)(1), which shall be within the tariff scope under § 514.11(b)(10), as further defined in Tariff Rule 1, § 514.15(b)(1). Location Groups under § 514.10(b)(2) may not be used in inland rate tables, but U.S. ZIP Codes may.

(3) *Accurate identification of service.* (i) Tariff Rules 1 and 13 (§ 514.15 (b)(1) and (b)(13)) shall include a clear description of the service offered, including whether the tariff TLIs are "through rates," which include the rates for all services on the overall route; are proportional rates to which the inland rate must be added; or both.

(ii) Common carriers and conferences which publish more than one intermodal rate tariff from, to or between the same points, ports or regions, based on mode of service, description of commodities, etc., shall provide in Rule No. 1 of each respective tariff a cross-reference to the FMC number and description of the application of such other tariff(s).

(iii) TLIs involving intermodal or transshipment service shall include an appropriate statement to this effect in the applicable commodity description record(s) and/or TLI notes under § 514.13, but all rates and charges affecting the TLI shall be entered in the proper form in the Applicable Assessorial Charges section and/or inland rate tables.

(4) *Participating carriers.* Tariff Rule 13 (§ 514.15(b)(13)) shall include a description of the modes of service of the carriers participating in the movements.

(5) *Backup agreements and data.* Tariff Rule 13 shall include:

(i) A contract of affreightment clearly setting forth the responsibility for the service which is consistent with the holding out provided by the application of the rates and conditions of the tariff; and

(ii) For domestic offshore carriers, identification of every Interstate Commerce Commission ("ICC") tariff covering any part of the intermodal and/or transshipment services and a description of the services to which each ICC tariff applies.

(6) *Transshipment rule.* Where transshipment services are provided, the filer shall include in Tariff Rule 13 the provision set forth in § 514.15(b)(13)(iii).

(c) *Inland rate tables*—(1) *Application.* (i) If a carrier or conference desires to provide intermodal transportation to or from named inland points at combination rates, it shall clearly and accurately set forth the applicable inland charges in the ATFI "Inland Rate Tables" file. Other tables, similar to inland rate tables in that they result in the addition of amounts to TLIs, such as surcharges (assessorials), may be constructed in algorithm format under §§ 514.10(d) and 514.15 in the Tariff "Rules" file. The ATFI "Batch Filing Guide" and the ATFI Interactive Filing Guide provide details on the data creation and filing requirements for inland rate tables, as well as for Tariff Rules' tables.

(ii) *Arranging for inland services.* In the event that a carrier or conference does not provide through transportation at through rates, but merely arranges for inland transportation services, then the carrier or conference shall describe all the fees, charges, privileges and facilities that are included under such arrangements in the inland rate tables and/or in Tariff Rule 1 and/or 13 (§ 514.15 (b)(1) and (b)(13)) in algorithm form, when applicable.

(2) *Intermodal transportation at combination rates.* The ATFI system will display and calculate intermodal transportation combination rates when:

(i) An inland point is designated for a shipment cost calculation;

(ii) The TLI selected applies to a port; and

(iii) An inland rate table exists in an electronically filed tariff with a valid entry for the inland point and the port.

(3) *Prohibition Against Use of Inland Rate Tables.* When a TLI specifies either origin or destination as an inland point, it will be considered a "through rate" and rates from the inland rate table will be ignored.

(4) *Sample inland rate table* (simulated partial screen). The inland rate tables are created on preliminary screens and, when final, appear as follows:

[§ 514.14(c)(4)]

ATFI INLAND RATE TABLE

XYZ Line Worldwide Commodity Tariff (XYZZ001)

Table Name: Inland Rates - France **Filing Date:** 01Jan1992
Applies to: France **Effective:** 31Jan 1992 **Thru**
VIA Ports: Antwerp, Belgium **Expiration:**
Amend Type: I **Sp Case Number:**

Inland Cities	Overland By Truck	Overland By Rail	Combination Truck -Rail
ARGENTEUIL, FRANCE	300.00	200.00	200.00
ASNIERES, FRANCE	450.00	350.00	310.00
CHELLES, FRANCE	350.00	250.00	235.00
MEAUX, FRANCE	500.00	400.00	375.00
MONTREUIL, FRANCE	400.00	300.00	325.00
PARIS, FRANCE	250.00	225.00	215.00
VERSAILLES, FRANCE	275.00	250.00	250.00
VINCENNES, FRANCE	325.00	285.00	300.00
VITRY, FRANCE	425.00	400.00	395.00

(5) *Via Ports.* As in the illustration in § 514.13(b), the "VIA Port" to the destination, Paris, is "Antwerp." Here, however, the inland rate would be added to the applicable TLI, rather than being included in it.

(6) *Inland points.* While the screen uses cities, other selection criteria (to access rows of data) are "ZIP Code (U.S.)," "state" or "province," or "country name."

(7) *Columns.* Inland rate tables can be much more complex than the screen example and more than two columns may not fit on one screen (either vertically or horizontally). Thus, similar to functionality for other types of screens, a toggle function will allow the user to select any two columns for screen comparison, and "Up" and "Down" arrows will provide vertical flexibility.

(8) *Condition statements.* While not applicable to inland rate tables, the assessorial charge calculation/condition statement may be used to facilitate a unique or special inland charge.

§ 514.15 Tariff Rules.

(a) *General.* (1) This section requires the electronic filing of certain tariff matter other than the major ATFI objects (TLIs, etc.) addressed elsewhere in this part, which in any way affects the application of the tariff or is related to tariff objects, as prescribed in this part. Matter required to be filed by this section shall be contained in the ATFI tariff, either:

(i) In mandatorily numbered and titled Tariff Rules under paragraph (b) of this section; or

(ii) Where the listed mandatory subjects of Tariff Rules would not include a specific proposed rule or other tariff matter of the filer, in optional Tariff Rules under paragraph (c) of this section, with the filer selecting the number (beginning with number 100) and title.

(2) *Algorithms and text.* (i) Where the Tariff Rule directly affects the TLI, e.g., by the addition of a surcharge for certain conditions, the assessorial

charge calculation/condition statement (and assessorial table, where applicable) shall be set forth in the Tariff Rule as an algorithm, which shall be electronically linked to each tariff item to which it applies, as described in § 514.10(d) and in the Batch Filing and Interactive Filing Guides. See also § 514.14(c)(1).

(ii) Contents of Tariff Rules other than algorithms shall be entered in full-text format and be clear, explicit and complete.

(3) *Application of rule.* Where a Tariff Rule affects only particular items, each affected item, e.g., commodity description, TLI, etc., shall specifically refer and be linked to such rule, as described in the Batch Filing and Interactive Filing Guides.

(4) *Subrules.* Where the subject or titleof a Tariff Rule permits, obviously-related subrules may be used.

(5) *Rules tariffs.* Tariff Rules may also be contained in separate tariffs, as described in § 514.12.

(6) *Rule Access Window.* ATFI's Rule Access Window lists by Tariff Rule number and title all of the Tariff Rules contained in a particular tariff.

(b) *Mandatory Tariff Rules.* Specific Tariff Rules affecting the tariff, and/or other materials required by this part to be included in Tariff Rules, shall be contained in the appropriate Tariff Rules, as designated by the numbers and titles specified in this paragraph. In the event that a particular title contained in this paragraph does not apply to any matter affecting the tariff, the rule number and title shall be entered with a statement that the rule is not applicable ("N/A"). See § 514.12(a)(i). Tariff matter obviously falling within a particular title may not be contained in another, less descriptive title and, where a mandatory subject under this paragraph is not applicable, the tariff matter shall be filed in an optional rule under paragraph (c) of this section, with the appropriate title. Mandatory Tariff Rule (and subparagraph) numbers, titles, content (as also may be required by other sections of this part cross referenced in this paragraph) are as follows:

(1) *Scope.* As described in § 514.11(b)(10), the Tariff Record's scope is briefly set forth in location and/or location group pairs for origin and destination. Tariff Rule 1 shall be consistent with the Tariff Record scope, but describe it in complete detail, especially for the following types of tariffs or tariff items:

(i) *Foreign and domestic (offshore) commodity tariffs.*

(ii) *Equipment interchange tariffs* under § 514.12(b)(3)(ii).

(iii) *Intermodal or transshipment* tariff provisions under § 514.14(b). See also paragraph (b)(13) of this section.

(2) *Application of rates and charges.* Tariff Rule 2 shall contain a clear and definite statement of:

(i) All services provided to the shipper and covered by the TLIs, including the rate bases set forth in § 514.13 (b)(17)(ii) and (b)(17)(iv)(A) and inland rate tables under § 514.14(c); and

(ii) The extent of any limitation or restriction, if the application of any of the rates, charges, Tariff Rules or regulations stated in the tariff is restricted to any particular port, pier, etc.

(3) *Rate applicability rule.* Tariff Rule 3 shall contain a clear and definite statement of the time at which tariff changes become applicable to any particular shipment, including the following:

(i) *In foreign commerce,* the tariff rates, Tariff Rules and charges applicable to a given shipment must be those published and in effect on the date the cargo is received by the common carrier or its agent (including originating carriers in the case of rates for through transportation).

(ii) *In domestic offshore commerce,* for joint rates in intermodal transportation, the rate applicable to any particular cargo movement shall be that rate which is in effect on the day the initiating carrier takes possession of the shipment.

(4) *Heavy lift.* Tariff Rule 4 shall contain a clear and definite statement of all heavy lift practices and charges.

(5) *Extra length.* Tariff Rule 5 shall contain a clear and definite statement of all extra length practices and charges.

(6) *Minimum bill of lading charges.* Tariff Rule 6 shall contain a clear and definite statement of minimum bill of lading charges and applicability.

(7) *Payment of freight charges.* Tariff Rule 7 shall contain a clear and definite statement of:

(i) All requirements for the payment of freight charges;

(ii) Currency restrictions, if any, and the basis for determining the rates of currency exchange (see § 514.10(c)); and

(iii) If credit is extended to shippers, the credit terms available and the conditions upon which credit is extended. In foreign commerce, when credit applications or agreements are required, specimens of such applications or agreements shall be filed as part of this Tariff Rule.

(8) *Bill(s) of lading.* Unless a governing bill of lading tariff has been filed under § 514.12(a)(1)(iv), Tariff Rule 8 shall contain all clauses of every applicable specimen copy of any bill of lading, contract of affreightment, and other document (except for a service contract and its essential terms under §§ 514.7 and 514.17) evidencing the transportation agreement between carrier and shipper. Such shipping contracts shall indicate that they are subject to the terms and conditions of the carrier's Federal Maritime Commission tariffs and may not contain provisions inconsistent with the Tariff Rules and regulations published in any applicable tariff.

(9) *Freight forwarder compensation.* Tariff Rule 9 shall contain a clear a definite statement of:

(i) *In foreign commerce,* the rate or rates of compensation to be paid to licensed ocean freight forwarders on United States export shipments in accordance with § 510.23(b) of this chapter.

(ii) *In domestic offshore commerce,* the exact rate or rates, if any, to be paid ocean freight forwarders (see also § 510.23(d) of this chapter).

(10) *Surcharges and arbitraries.* Tariff Rule 10 shall contain algorithms and explanatory text of surcharges and arbitraries for items not elsewhere provided for in this section. Rates from or to designated ports may be established by applying an arbitrary or differential charge based upon the rate applicable to a specified "base port," provided that any such arbitrary or differential is clearly defined, set forth as an algorithm (with table, if necessary) and is referenced (linked) in the commodity description or TLI affected.

(11) *Minimum quantity rates.* See also § 514.11(a)(2)(i)(D). Tariff Rule 11 shall state:

(i) *For foreign commerce:*

When two or more TLIs are named for the same commodity over the same route and under similar conditions, and the application is dependent upon the quantity of the commodity shipped, the total freight charges assessed against the shipment may not exceed the total charges computed for a larger quantity, if the TLI specifying a required minimum quantity (either weight or measurement per container or in containers), will be applicable to the contents of the container(s), and if the minimum set forth is met or exceeded. At the shipper's option, a quantity less than the minimum level may be freighted at the lower TLI if the weight or measurement declared for rating purposes is increased to the minimum level.

(ii) *For domestic offshore commerce:*

When two or more TLIs are named for the same commodity, and the application is dependent upon the quantity of the commodity shipped, the charges assessed against the smaller shipment may not exceed those for any larger quantity.

(12) *Ad Valorem Rates.* Tariff Rule 12 shall contain a clear and definite statement of:

(i) The method of computing an *ad valorem* TLI or charge, to the extent not included elsewhere in the tariff (e.g., in connection with a TLI under § 514.13(b)(17)(i)); and

(ii) The additional liability, if any, assumed by the tariff owner in consideration for the *ad valorem* rate or charge.

(13) *Transshipment and intermodal services.* When transshipment or intermodal services under § 514.14 are offered, Tariff Rule 13 shall contain:

(i) A clear description of the modes of service of the participating carriers (see § 514.14(b)(4)) and any other fees, charges, privileges and facilities included;

(ii) Backup agreements and data, as described in § 514.14(b)(5); and

(iii) For transshipment arrangements, a provision substantially as follows (see § 514.14(b)(6)):

The Tariff Rules, regulations and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating connecting or feeder carrier. Every participating connecting or feeder carrier, which is a party to transshipment arrangements, has agreed to observe the Tariff Rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(14) *Co-Loading in foreign commerce.* Tariff Rule 14 governs co-loading by NVOCCs in foreign commerce and shall contain the following provisions:

(i) *Filing requirements.* (A) If an NVOCC does not tender cargo for co-loading, Tariff Rule 14 shall so indicate.

(B) If two or more NVOCCs enter into an agreement which establishes a carrier-to-carrier relationship for the co-loading of cargo, then the existence of such agreement shall be noted in Tariff Rule 14.

(C) If two NVOCCs enter into a co-loading arrangement which results in a shipper-to-carrier relationship, the tendering NVOCC shall describe in Tariff Rule 14 its co-loading practices and specify its responsibility to pay any charges for the transportation of the cargo. A shipper-to-carrier relationship shall be presumed to exist where the receiving NVOCC issues a bill of lading to the tendering NVOCC for carriage of the co-loaded cargo.

(ii) *Documentation requirements.* NVOCCs which tender cargo to another NVOCC for co-loading, whether under a shipper-to-carrier or carrier-to-carrier relationship, shall annotate each applicable bill of lading with the identity of any other NVOCC to which the shipment has been tendered for co-loading. Such annotation shall be shown on the face of the bill of lading in a clear and legible manner.

(iii) *Co-loading rates.* No NVOCC may offer special co-loading rates for the exclusive use of other NVOCCs. If cargo is accepted by an NVOCC from another NVOCC which tenders that cargo in the capacity of a shipper, it must be rated and carried under tariff provisions which are available to all shippers.

(15) *Open rates in foreign commerce.* Tariff Rule 15 of a conference tariff shall contain a clear and definite statement of:

(i) The meaning of the word "open" in "open rates," and the extent to which conference rates have been opened pursuant to § 514.13(b)(19)(ii);

(ii) Any restriction or limitation on the right of participating common carriers to fix their own rate items, and the extent to which applicable Tariff Rules and regulations of the conference tariff will continue to govern the rates filed by each individual line; and

(iii) Where the rates of the individual conference member lines on open-rated items may be found.

(16) *Hazardous cargo.* When TLIs for explosive, inflammable, corrosive, or other dangerous materials are published (or Tariff Rule 16 does not specifically prohibit carriage of such materials), Tariff Rule 16 shall contain either:

(i) Tariff Rules governing the carriage of all types of hazardous cargo; or

(ii) Reference to applicable governing and/or general reference tariffs, as described in § 514.12.

(17) *Green salted hides in foreign commerce.* For foreign commerce, Tariff Rule 17 shall require that:

(i) The shipping weight for purposes of assessing transportation charges on green salted hides shall be either a scale weight or a scale weight minus a deduction which amount and method of computation are specified in the commodity description record or TLI, as referenced by § 514.13(b)(17)(iii); and

(ii) The shipper furnish the common carrier a weighing certificate or dock receipt from an inland common carrier for each shipment of green salted hides at or before the time the shipment is tendered for ocean shipment.

(18) *Returned cargo in foreign commerce.* Where the tariff owner offers the return shipment of refused, damaged or rejected shipments, or exhibits at trade fairs, shows or expositions, to port of origin at the TLI assessed on the original movement, when such TLI is lower than the prevailing TLI, Tariff Rule 18 shall provide that:

(i) The return of shipment(s) be accomplished within a specific period not to exceed one year;

(ii) The return movement be made over the line of the same common carrier performing the original movement, except that in the case of a conference tariff, return may be made by any member line when the original shipment was carried by a conference member under the conference tariff; and

(iii) A copy of the original bill of lading showing the rate assessed be surrendered to the return common carrier.

(19) *Shippers requests, consultations and complaints in foreign commerce.* Tariff Rule 19 shall contain clear and complete instructions in accordance with the effective agreement's provisions, stating where and by what method shippers may file their requests and complaints and how they may engage in consultation under section 5(b)(6) of the 1984 Act, together with a sample of the rate request form if one is used or, in lieu thereof, a description of the information necessary for processing the request or complaint.

(20) *Overcharge claims.* Tariff Rule 20 shall contain provisions that conform to the following:

(i) No tariff may limit the filing of overcharge claims with a common carrier for private settlement to a periou (beginning with the accrual of the cause of action) ending in less than:

(A) Three years in foreign commerce; or

(B) Two years in domestic offshore commerce.

(ii) The acceptance of any overcharge claim may not be conditioned upon the payment of a fee or charge.

(iii) No tariff may require that overcharge claims based on alleged errors in weight, measurement or description of cargo be filed before the cargo has left the custody of the common carrier.

(iv) Tariff Rule 20 shall also:

(A) Provide that shippers or consignees may file claims for the refund of freight overcharges resulting from errors in weight, measurement, cargo description or tariff application; and

(B) Clearly indicate where and by what method such claims are to be filed with the common carrier and that such claims may also be filed with the Federal Maritime Commission. At a minimum, Tariff Rule 20 shall contain the following provisions:

(*1*) Claims for freight rate adjustments filed in writing will be acknowledged by the common carrier within 20 days of receipt by written notice to the claimant of the tariff provisions actually applied and the claimant's rights under the 1916 Act or 1984 Act.

(*2*) Claims seeking the refund of freight overcharges may be filed in the form of a complaint with the Federal Maritime Commission, Washington, D.C. 20573, pursuant to either:

(*i*) Section 11(g) of the Shipping Act of 1984 (46 U.S.C. app. 1710) for foreign commerce, and that such claims must be filed within *three years* of the date the cause of action accrued; or

(*ii*) Section 22 of the Shipping Act, 1916 (46 U.S.C. app. 821) for domestic offshore commerce, and that such claims must be filed within *two years* of the date the cause of action accrues.

(21) *Use of carrier equipment.* Tariff Rule 21 shall contain provisions conforming to the following regulations:

(i) If a carrier or conference provides equipment to shippers, consignees, or inland carriers, or other persons acting as the agent for the person paying the freight charges:

(A) A sample equipment interchange agreement, or the terms and conditions governing the use of said equipment, shall be published in the carrier's or conference's Tariff Rule 21. The sample agreement shall include: the general terms and conditions affecting cost (e.g., maintenance and repair requirements, insurance obligations, pickup or drop off charges and services, such as tracing and replenishing fuel or refrigerant for reefer containers), that govern the use of carrier-provided equipment, including cargo containers, trailers and chassis. It shall also include the standard free time allowed and detention or similar charges assessed. Standard free time and charges shall be included as the last item in the agreement or Tariff Rule 21, as applicable, and shall clearly identify the location and type of equipment to which they apply.

(B) If a carrier or conference does not have a sample equipment interchange agreement, the carrier shall publish its terms and conditions and standard free time and charges in its Tariff Rule 21, as described in paragraph (b)(21)(i)(A) of this section. In foreign commerce, where a foreign government prohibits the use of a carrier or conference equipment interchange agreement, Tariff Rule 21 shall contain a statement to that effect.

(ii) If a carrier or conference has exceptions to the standard free time and charges, or changes in the terms and conditions which result in changing the free days and/or charges, the party (inland carrier, consignee, or shipper) to which the exception applies, location, type of equipment and free days and charges shall be clearly identified for each exception. The exceptions shall be arranged in alphabetical order of the parties to which the exceptions apply and shall be included in either:

(A) Tariff Rule 21; or

(B) A separate equipment interchange tariff filed by the carrier or conference in accordance with § 514.12(b)(3), in which case Tariff Rule 21 shall identify the separate equipment interchange tariff containing the exceptions. A carrier or conference is not precluded from publishing a separate equipment interchange tariff even though it does not have exceptions to the standard free days and charges.

(22) *Automobile Rates in domestic offshore commerce.* If TLIs for automobiles are published, as described in § 514.13(b)(17)(iv)(B)*(1)*, introductory paragraph, Tariff Rule 22 shall contain:

(i) The cubic measurement for the five most recent model years prescribed by the manufacturer of the each applicable particular make or model, arranged as algorithms in table form for the relevant TLIs; and

(ii) A clear and definite description of all other applicable regulations, if not contained in the commodity description record(s).

(23) *Carrier terminal rules and charges.* Tariff Rule 23 of carrier and conference tariffs:

(i) Shall state separately every terminal or other charge and discount and service (including privileges, facilities and services) under the control of the common carrier or conference which is granted or allowed to any shipper, consignee, or passenger, regardless of whether the service results in a charge or discount separately assessed as an addition to or subtraction from the carrier's basic TLI, in which case it shall be set forth as an algorithm, or is simply included within the basic TLI, without differentiation;

(ii) Shall contain a rule in compliance with part 525 of this chapter, if the tariff names rates on import traffic shipped through the port of New York, or to a range of ports which includes New York; and

(iii) May provide for an amendment, effective upon filing:

(A) Increasing a charge for terminal services, canal tolls or additional items, without the increase being separately stated on the bill of lading, but only if such charge is not under the control of the filing common carrier or conference, which merely acts as a collection agent for the charge, and the agency making such charge to the common carrier or conference increases the charge without notice to the common carrier or conference and is identified in Tariff Rule 23 by name and appropriate tariff number (see § 514.9(b)(20)); and

(B) For domestic offshore commerce, establishing additional terminal facilities for loading or discharging cargo at ports or harbors already served, but only if the rates to be charged at such facilities are the same as those currently applicable to comparable facilities of the carrier at the same port or harbor (see § 514.9(b)(16)(i)(B)).

(24) *NVOCCs in foreign commerce: bonds and agents.* NVOCCs in foreign commerce are governed by the provisions of this subparagraph and Tariff Rule 24 of each of their tariffs shall contain provisions substantially as follows:

(i) Every non-vessel-operating common carrier ("NVOCC") in foreign commerce shall state in Tariff Rule 24 of its tariffs on file with the Federal Maritime Commission that it has furnished the Commission a bond in the amount required by 46 CFR 583.4 to ensure the financial responsibility of the NVOCC for the payment of any judgment for damages arising from its transportation-related activities, order for reparations issued pursuant to section 11 of the Shipping Act of 1984, or penalty assessed pursuant to section 13 of the Shipping Act of 1984. In Tariff Rule 24, the NVOCC shall state its bond number and identify the name and address of the surety company issuing the bond.

(ii) Every NVOCC in foreign commerce which is not domiciled in the United States shall enter in the first address field provided in each of its Tariff Records under 46 CFR 514.11(b)(8)(ii) the name and address of a person in the United States designated under 46 CFR 583.5 as its legal agent for the service of judicial and administrative process, including subpenas. The NVOCC shall also state in Tariff Rule 24 that, in any instance in which the designated legal agent cannot be served because of death, disability or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the NVOCC's legal agent for service of process.

(iii) Service of administrative process, other than subpenas, may be effected upon the legal agent by mailing a copy

of the documents to be served by certified or registered mail, return receipt requested.

(25) *Certification of shipper status in foreign commerce.* If a common carrier adopts a procedure other than those set forth in § 583.7 (b)(1) or (b)(2) of this chapter, for determining whether NVOCCs for whom it wishes to transport cargo have complied with the tariff and bonding requirements of sections 8 and 23 of the 1984 Act, that procedure shall be clearly set forth in Tariff Rule 25 of its tariff.

(26) *Time/volume rates in foreign commerce.* In connection with time/volume rates offered under § 514.13(b)(19)(i), Tariff Rule 26 of common carrier and conference tariffs in foreign commerce shall clearly and accurately:

(i) State all charges, classifications, rules and practices concerning time/volume rates;

(ii) Identify the shipment records which will be maintained to support the rates;

(iii) Describe the method to be used for shippers giving notice of their intention to use a time/volume rate prior to tendering any shipment under the time/volume-rate arrangements; and

(iv) State that:

(A) Once a time/volume rate is accepted by one shipper, it shall remain in effect for the time specified, without amendment; and

(B) Shipper notices and shipment records supporting a time/volume rate will be maintained by any offering carrier or conference for at least five years after any shipper's use of a time/volume rate has ended.

(27) *Loyalty contracts in foreign commerce.* Where the filer intends to use a loyalty contract in foreign commerce:

(i) Tariff Rule 27 shall contain a sample of every loyalty contract, as defined in 46 CFR 514.2, together with regulations which set forth the scope and application of the contract system.

(ii) The use of any sample loyalty contract and applicable regulations filed for inclusion in a tariff under paragraph (b)(27) of this section shall be presumed to be "in conformity with the antitrust laws," within the meaning of section 10(b)(9) of the 1984 Act, if such contract makes reference to a Business Review Letter, issued pursuant to 28 CFR 50.6, indicating no objection to the use of that contract.

(28) *Definitions.* Tariff Rule 28 shall include any filer definitions of technical terms which, however, may not be inconsistent with the 1916 or 1984 Acts or this part.

(29) *Symbols.* Tariff Rule 29 shall include any filer symbols, service codes, etc. and explanations therefor which, however, may not be inconsistent with the those set forth in this part or the "Batch Filing Guide."

(30) *Access to tariff information.* Tariff Rule 30 shall contain a clear and complete description of all costs, conditions and arrangements for public inspection of tariff material. See § 514.8(k)(1)(iv).

(31) *Seasonal discontinuance.* (i) Tariff Rule 31 shall contain announcements of seasonal discontinuance or restoration of service, which shall be filed on not less than ten days' notice, except by special permission under § 514.18. Such announcements shall contain a brief statement announcing the date of discontinuance and/or restoration of service and may include no other tariff matter. The TLIs associated with service discontinuance or restoration shall be amended, expired or filed as applicable, and shall meet all criteria for TLI filings/amendments.

(ii) Tariff Rule 31 of tariffs naming rates, fares or Tariff Rules applicable to all water routes which are closed to navigation during part of a year shall:

(A) Contain provisions governing the handling of shipments which may arrive at the publishing carrier's facilities after the date service is discontinued; and

(B) Expressly provide for the seasonal discontinuance provision's own expiration at the close of the navigation season, or include a rule providing for the discontinuance/restoration of service based on the stated navigation season.

(c) *Optional Tariff Rules.* Tariff Rule numbers 100 and up (to be numbered consecutively) are available for carrier/conference use.

§ 514.16 [Reserved]

§ 514.17 Essential terms of service contracts in foreign commerce.

(a) *General.* (1) A concise statement of the essential terms (*ETs*) of service contacts (which are filed in paper form under § 514.7) shall be filed with the Commission by authorized persons (see § 514.4(d)(5)) and made available to the general public in electronic tariff format under this section. Filing and maintenance of ETs are accomplished through an electronic essential terms publication (ETP) for each carrier or conference filer, which contains ETs for each of the carrier's or conference's service contracts.

(2) *Cross-references*—(i) *Authority to file:* § 514.4(d)(5);

(ii) *Cancelation.* 514.4(e)(2).

(iii) *Availability of essential terms:* § 514.7(f).

(iv) *Rejection of service contracts and/or essential terms:* § 514.7(j).

(v) *Modification, correction and cancelation:* § 514.7(k).

(vi) *Assessorials and algorithms:* § 514.10(d)(1).

(b) *Essential terms publication*—(1) *Creation and form.* The ETP is created and maintained by the filer as a separate *tariff type ("ET"for "ETP")* with a tariff record and number (see § 514.11(b)). A service-contract filer, either carrier or conference, may have only one ETP for all its ETs. The ETP may also contain matter of general applicability to all ETs contained therein, such as Tariff Rules. The ATFI system will coordinate development of ET search indexes by, for example: ET, service contract or FMC file number; by commodity name or number; by TLI number; and, by origin or destination of the commodity.

(2) *Reference to/in tariffs of general applicability.* The ETP shall:

(i) Contain reference to each carrier's or conference's tariff of general applicability; and

(ii) Be referenced in each of the carrier's or conference's tariffs of general applicability, where required to be filed under this part.

(c) *Statement(s) of essential terms; general requirements.* (1) Essential terms shall be promptly filed by the appropriate person, in the carrier's or conference's ETP and in the content and tariff format as provided by this part. (The service contract, in paper form, is required to be filed within ten (10) days of the electronic filing of the essential terms under § 541.7(g).)

(2) Essential terms may not:

(i) Be uncertain, vague or ambiguous; or

(ii) Contain any provision permitting modification by the parties other than in full compliance with this part.

(d) *Essential terms; specific requirements*—(1) *ATFI sample screen illustration.* The following ATFI sample (partial) screen illustrates the elements required to be contained in essential terms filings (here for one commodity and one TLI) and how they appear in the ATFI system. (The references in brackets are to the paragraphs of this section which explain the requirements for the fields and the data contained therein.)

```
[§ 514.17(d)(1)]                          ATFI ESSENTIAL TERMS SEARCH
                                JKL Line Essential Terms Publication ( XYZ 004 )                [(b)(1)]
[(d)(2)]  ET Num: 681   SC Num: 765                      ET Filing date: 01Jan1992              [(d)(3)]
                                                  Contract Effective date: 01Dec1992             [(d)(4)]
[(d)(3)]   Available until: 31Jan1992            Contract Expiration date: 15Jan1993             [(d)(4)]
                                                 Contract Termination date: 15Jan1993             [(d)(5)]
              Description: Alarm clocks                                                          [(d)(6)]
                                Full Service Contract Essential Terms Display
                Commodity: 9105-11-0023  Clocks                                                  [(d)(6)]
                     Full: Alarm clocks; battery or AC powered                                   [(d)(6)]
                      TLI: 9105-11-0023-0002  PP LS 40   01Jan1992  3,100.00 USD                [(d)(7)(ii)]
========================================= End of Commodity 9205-90-0023 =========================================
      REQ TERM 1  : ORIGIN (location or group name)                                              [(d)(8)(i)]
      REQ TERM 2  : DESTINATION    ( " )                                                         [ii)]
      REQ TERM 3  : MINIMUM QUANTITY (text)                                                      [(iii)]
      REQ TERM 4  : SERVICE COMMITMENTS (text)                                                   [(iv)]
      REQ TERM 5  : LIQUIDATED DAMAGES FOR NON-PERFORMANCE (if any)                              [(v)]
      REQ TERM 6  : LATER EVENTS CAUSING DEVIATION (if any)                                      [(vi)]
      REQ TERM 7  : DURATION  (e.g., "46 days from 01DEC1992 to 15JAN1993")                      [(vii)]
      OPT TERM 1  : (TITLE and text)                                                             [(d)(9)]
      OPT TERM 2  : (TITLE and text)-------------------------------------------------------------[(d)(9)]
```

(2) *ET (statement of essential terms) and SC (service contract) numbers.* The "ET Num" and "SC Num" are defined by the filer and shall be entered in the appropriate fields.

(3) *Period of availability.* The period of availability of the essential terms to similarly situated shippers shall be no less than thirty (30) days, i.e., from the "Filing date" (automatically entered by ATFI under § 514.10(a)(2)) to the "Available until" date (automatically defaulted to 0 days from the filing date, but the filer can enter a later date, making the availability period longer).

(4) *Duration of contract.* In addition to the period of availability of essential terms to similarly situated shippers, the service contract itself must have an effective date and an expiration date (see § 514.10 (a)(3) and (a)(4)), governing the duration of the contract between the original signatory parties. The duration must also be set forth in required essential term # 7 under paragraph (d)(8)(vii) of this section.

(5) *Contract termination date.* A statement of essential terms may not be canceled until after all of its associated service contracts, including any renewal or extension, have expired under the terms of the contract, or have been terminated for reasons not specifically set forth in the contract. See §§ 514.4(e)(2) and 514.7(l)(1)(ii). The contract termination date would, therefore, be the same as the contract expiration date, unless terminated sooner, in which case the filer would enter the earlier date when the termination event occurred.

(6) *Commodity.* The commodities covered by a service contract shall be entered as described in § 514.13(a). See § 514.7(c) for exempt commodities.

(7) *Mandatory terms.* (i) Essential terms shall contain the contract rates or rate schedule(s), including any additional or other charges (i.e., general rate increases, surcharges, terminal handling charges, etc.) that apply, and any and all conditions and terms of service or operation or concessions which in any way affect such rates or charges; except that a contract may not permit the contract rate to be changed to meet a rate offer of another carrier or conference not published in a tariff or set forth in a service contract on file with the Commission. In ATFI, the mandatory terms shall be entered as described in paragraphs (d)(7)(ii) and (d)(8) of this section.

(ii) *TLI.* The tariff line items for essential terms are similar in format to those in a commodity tariff, as prescribed by § 514.13(b). In the screen example, the ATFI system adds four digits to the commodity code to obtain the TLI number. As set forth in the "Batch Filing Guide's" Data Element Dictionary, the basic conditions and terms of service include: "PP" (Shipment service code for "Pier to Pier"); "LS" (Rate basis for "Lump Sum"); and "40" (Container size for a 40-foot container). The date, "01Jan1992" is the TLI filing date and the basic rate is $3,100 (U.S. dollars).

(8) *Other required terms.* In addition to the data described in paragraphs (d)(2) through (d)(7) of this section, essential terms shall also contain the following terms, with the mandatory numbers and subjects as follows:

(i) *Origin.* The origin port range(s) in the case of port-to-port movements, and the origin geographic area(s) in the case of through intermodal movements, except that, in service contracts, the origin and destination of cargo moving under the contract need not be stated in the form of "port ranges" or "geographic areas," but shall reflect the actual locations agreed to by the contract parties. See § 514.10(b).

(ii) *Destination.* The destination port range(s) in the case of port-to-port movements, and the destination geographic area(s) in the case of through intermodal movements, except that, in service contracts, the origin and destination of cargo moving under the contract need not be stated in the form of "port ranges" or "geographic areas," but shall reflect the actual locations agreed to by the contract parties. See § 514.10(b).

(iii) The *minimum quantity of cargo or freight revenue* necessary to obtain the rate or rate schedule(s), except that the minimum quantity of cargo committed by the shipper may not be expressed as a fixed percentage of the shipper's cargo.

(iv) The *service commitments* of the carrier, conference or specific members of a conference, such as assured space, transit time, port rotation or similar service features.

(v) *Liquidated damages for non-performance, if any.* See 514.7(l).

(vi) *Later events causing deviation (if any).* Where a contract clause provides that there can be a deviation from an original, essential term of a service contract, based upon any stated event occurring subsequent to the execution of the contract, a clear and specific description of the event, the existence or occurrence of which shall be readily

verifiable and objectively measurable. See § 514.7(l). This requirement applies to, *inter alia*, the following types of situations:

(A) Retroactive rate adjustments based upon experienced costs;

(B) Reductions in the quantity of cargo or amount of revenues required under the contract;

(C) Failure to meet a volume requirement during the contract duration, in which case the contract shall set forth a rate, charge, or rate basis which will be applied;

(D) Options for renewal or extension of the contract duration with or without any change in the contract rate or rate schedule;

(E) Discontinuance of the contract;

(F) Assignment of the contract; and

(G) Any other deviation from any original essential terms of the contract.

(vii) The *duration of the contract*, stated as a specific, fixed time period, with a beginning date (effective date) and ending date (expiration date). See paragraph (d)(4) of this section.

(9) *Optional essential terms.* Any essential term of a service contract not specifically provided for in this section shall be entered after the required terms and in numerical order, beginning with # 1.

§ 514.18 Special permission.

(a) *General.* Section 8(d) of the 1984 Act and section 2 of the 1933 Act authorize the Commission, in its discretion and for good cause shown, to permit increases or decreases in rates, or the issuance of new or initial rates, on less than statutory notice under § 514.9. Section 9(c) of the 1984 Act authorizes the Commission to permit a controlled common carrier's rates, charges, classifications, rules or regulations to become effective on less than 30 days' notice. The Commission may also in its discretion and for good cause shown, permit departures from the requirements of this part. The Commission will grant such permission only in cases where merit is demonstrated.

(b) *Clerical errors.* Typographical and/or clerical errors constitute good cause for the exercise of special permission authority but every application based thereon must plainly specify the error and present clear evidence of its existence, together with a full statement of the attending circumstances, and shall be submitted with reasonable promptness after filing the defective tariff material. For correction of clerical errors in the essential terms of service contracts, see § 514.7(k)(1).

(c) *Application*—(1) *By authorized official; filing fee.* Application for special permission to establish rate increases or decreases on less than statutory notice or for waiver of the provisions of this part, shall be made by the common carrier, conference or agent that holds authorization under § 514.7(d) to file the tariff matter. Every such application shall be submitted to BTCL and be accompanied by the filing fee provided in § 514.21.

(2) *Transmittal.* Application for special permission shall be made only by cable, telegram or letter, except that in emergency situations, application may be made by telephone if the telephone communication is promptly followed by a cable, telex or letter and the filing fee.

(3) *Content.* Except as provided in § 514.7(k)(1), applications for special permission shall contain the following information:

(i) The organization name, number and d/b/a of the conference or carrier under § 514.11(b);

(ii) The tariff number, title and tariff code under § 514.11(b); and

(iii) The rate, commodity, Tariff Rules, etc. (related to the application), and the special circumstances which the applicant believes constitute good cause to depart from the requirements of this part or to warrant a tariff change upon less than the statutory notice period.

(d) *Implementation.* (1) If all conditions are complied with and if the authority granted by special permission is used, it shall be used in its entirety and in the manner set forth by the Commission, including the prompt electronic filing of the material for which permission is requested, with the filer using the special case number assigned by the Commission for that filing and the special case symbol "*S*," as prescribed in § 514.9(b)(19)(i).

(2) If Commission-specified conditions are not complied with, or if the exact authority granted by the special permission is not used and more, less or different authority is desired, a new application complying with the requirements of this part in all respects and referring to the previous special permission must be filed.

§ 514.19 Suspension of tariff matter.

All use of suspended tariff matter shall be deferred for the period specified in the Commission's suspension order. In addition to other affected places in the tariff, as provided in this section, the fact that tariff matter is suspended is also displayed through the "Status" function in the command line, as described in § 514.8(n)(3).

(a) *Domestic offshore commerce*—(1) *Suspension; period.* The Commission may suspend from use any rate, fare, charge, classification, Tariff Rule, regulation, or practice of a domestic offshore carrier for a period of up to 180 days beyond the time it would otherwise have lawfully taken effect.

(2) *Implementation.* Upon issuance of an order suspending tariff matter, in whole or in part, the BTCL shall immediately make the appropriate entry in the domestic offshore carrier's tariff(s) for each suspended item, which entry:

(i) Specifically identifies the tariff matter suspended and sets forth any tariff provisions which may remain effective in lieu of the suspended provisions;

(ii) Bears an effective date coinciding with that in the applicable suspension order;

(iii) Bears a thru date coinciding with the end of the suspension period specified in the Commission order; and

(iv) Reproduces in the ATFI System News and/or the applicable commodity description record, TLI notes, Tariff Rule text, etc., those portions of the order directed by the Commission to be so published, or, in the absence of such direction, reproduces the suspension order in its entirety.

(3) *Amendment of suspended tariff matter.* (i) Neither suspended matter nor matter continued in effect as a result of a suspension, may be amended, deleted or withdrawn except through use of the special case number and symbol under § 514.9(b)(19) referred to in the order or special permission issued by the Commission, except that a tariff affected by a suspension order may be amended during the suspension period if the amendment does not affect the suspended materials.

(ii) If, prior to receiving a suspension order, a carrier files an amendment reissuing, deleting, cancelling or amending any tariff matter named in a subsequent suspension order, the amendment shall be rejected.

(4) *Vacating suspension of tariff matter.* Should the Commission vacate a suspension order earlier than the date to which the subject tariff matter was originally suspended, BTCL shall immediately change the thru date to the specified date in the Commission's order vacating the suspension order.

(5) *Cancelation of suspended matter.* (i) Should the Commission subsequently cancel all or any part of previously-suspended tariff matter, BTCL shall immediately change the expiration date to the date of cancelation set forth in the Commission's order. See § 514.4(e).

(ii) If suspended tariff matter is not cancelled by the Commission prior to its thru date, it shall take effect

automatically on the thru date and any tariff matter which was continued in effect during the suspension period shall be automatically superseded by the tariff matter that had been suspended but was not cancelled.

(b) Controlled common carriers in foreign commerce.

(1) *Suspension; period.* Tariff matter filed by a controlled common carrier may be suspended at any time before its effective date. Tariff matter already in effect may be suspended upon the Commission's issuance of a show cause order on not less than 60 days' notice to the common carrier. In either instance, the suspension period shall not exceed 180 days.

(2) *Implementation.* Upon issuance of an order suspending tariff matter, in whole or in part, the Commission's BTCL shall immediately make the appropriate entry into the controlled common carrier's tariff(s) for each suspended item, which entry:

(i) Specifically identifies the tariff material suspended;

(ii) Bears an effective date coinciding with that of the applicable suspension order;

(iii) Bears a thru date coinciding with the end of the suspension period specified in the Commission order; and

(iv) Reproduces in the ATFI System News and/or the applicable commodity description record, TLI notes, Tariff Rule text, etc., those portions of the order directed by the Commission to be so published, or, in the absence of such direction, reproduces the suspension order in its entirety.

(3) *Replacement rates.* (i) Controlled common carrier tariff matter filed to become effective during a suspension period in lieu of the suspended matter:

(A) May become effective immediately upon filing or upon the effective date of the suspension, whichever is later; and

(B) Shall be filed using the special case symbol and number issued by the Commission under § 514.9(b)(19).

(ii) In determining whether to reject replacement rates, the Commission will consider whether such rates result in total charges (e.g., rate plus applicable surcharges) that are lower than the lowest comparable charges effective for a U.S.-flag or reciprocal-flag common carrier serving the same trade.

(iii) At the same time it files replacement rates, the controlled common carrier shall submit to BTCL a letter (in paper format) identifying the specific U.S.-flag or reciprocal-flag common carrier's rates, charges, classification or Tariff Rules resulting in total charges which equal or are lower than its own.

(c) *Other suspension situations.* When the Commission, upon good cause shown, issues an order to suspend tariff matter not addressed in paragraphs (a) or (b) of this section, it will set forth in the order the procedures for effectuating the suspension.

(d) *Other filings in suspension situations.* In suspension situations, when filings, not provided for elsewhere in this section and not otherwise permitted by the rules of this part, may become necessary or desirable, such filings may be directed by the Commission and shall use the assigned special case symbol and number under § 514.9(b)(19).

§ 514.20 Retrieval.

(a) *General.* The Commission will not provide to the public tariff data in paper format, except pursuant to requests for certification of copies for court or government agency use, as provided in § 514.8(k)(2).

(b) *User charges.* User charges for services under this section are provided in § 514.21.

(c) *Interactive retrieval.* Interactive retrieval means the process by which any member of the public accesses the ATFI system via dial-up connection, using telecommunications links, a modem and a terminal (see § 514.8(e)), and interacts with the system on a transaction-by-transaction basis to retrieve tariff matter of carriers, conferences and terminal operators which has been filed in the ATFI database.

(1) *Registration.* Every public interactive retriever will be required to register in advance with BTCL under § 514.8(f) to obtain a USERID and password.

(2) *Retrieval restrictions.* Due to Congressional policy to impose reasonable restrictions on retrieval, a registered public interactive retriever:

(i) Will be prohibited from accessing more than one tariff at a time, except that governing tariffs under § 514.12(a)(1) are not subject to the one-tariff-at-a-time limitation during the retriever's access to the tariff that they govern; and

(ii) Will be logged off (automatically) the ATFI system:

(A) After 10 minutes of inactivity; or

(B) After a period of time, e.g., 30 minutes (shown at logon), which the Commission has determined is sufficient to allow access to several TLIs (and related tariff objects) of one tariff, as described in paragraph (c)(2)(i) of this section.

(3) *Remote retrieval by modem.* A public retriever may access and/or obtain (through screen prints) ATFI filed tariff data through modem and telecommunications links and procedures authorized by the Commission.

(4) *Tariff Control Center.* A public retriever may access and/or obtain ATFI filed tariff data through personal operation of one of several terminals provided in the Tariff Control Center at the FMC headquarters in Washington, D.C.

(d) *Batch retrieval through database tapes.* Interested parties may subscribe to all tariff filings/updates received by the Commission on a daily, weekly, or monthly basis. The ATFI System Administrator will record on 1600 bpi or 6250 bpi, 9 track, magnetic tape all of the tariff updates received during the previous calendar day, or other applicable subscriber-designated period, as well as any tariff update created by the Commission (e.g., suspensions, rejections, etc). These subscriber tapes will be distributed to subscribers via first class mail or made available for pick-up at the FMC ATFI Computer Center.

(e) *Instructional materials*—(1) *ATFI "Batch Filing Guide" and user manual.* The ATFI user guides applicable to retrieval functions are the "ATFI Fundamentals Guide," "ATFI System Handbook," and "ATFI Retrieval Guide." See § 514.8(b). The user of subscriber tapes will also need the ATFI transaction set formats and specifications detailed in the "Batch Filing Guide." See § 514.8(d)(3). The transaction set formats published for batch filers are used for the formatting of subscriber tapes.

(2) *Computer based instruction ("CBI").* Computer based instruction for ATFI retrieval is a menu option for registered interactive retrievers using the ATFI central site system. See § 514.8(h).

(f) *Filers.* Properly registered filers may access their own tariffs without restriction. Where filers also register as public retrievers for access to all tariff data, the restrictions in paragraph (c)(2) of this section shall apply when they enter ATFI under a retriever password.

§ 514.21 User charges.

In accordance with 5 U.S.C. 552 and 31 U.S.C. 9701, the following user charges are established for services under this part:

(a) *Application for exemption* (See §§ 514.3 and 514.8(a)): As provided in § 502.69 of this chapter.

(b) *User manual* (§ 514.8(b)): $15 for diskette(s) containing all user guides in WordPerfect 4.2 format.

(c) *Registration for user (filer and/or retriever) ID and password* (See exhibit 1 to this part and §§ 514.8(f) and 514.20): $100 for initial registration for firm and one individual; $25 for additions and minor changes.

(d) *Certification by Commission Secretary* of tariff data (§ 514.8(k)(2)): As provided in § 503.43(c) of this chapter.

(e) *Certification of batch filing software* (§ 514.8(l)): $200 per software package.

(f) *Application for special permission* (§ 514.18): $100.

(g) *Remote retrieval by modem* (§ 514.20(c)(3)): 50 cents per minute of connect time.

(h) *Printing* (screen prints) of downloaded tariff matter at Commission's Tariff Control Center (§ 514.20(c)(4)): as provided in part 503, subpart E.

(i) [Reserved]

(j) *Database tapes* (§ 514.20(d)): The fees for subscriber tapes are:

(1) *Initial set* of full database tapes: $300.

(2) *Daily* updates: $25 each.

(3) *Weekly* updates: $50 each.

(4) *Monthly* updates: $100 each.

§ 514.91 OMB control numbers assigned pursuant to the Paperwork Reduction Act. [Reserved]

BILLING CODE 6730-01-F

Exhibit 1 to Part 514 - ATFI User Registration Form

ADMINISTRATIVELY RESTRICTED

Federal Maritime Commission

Check one: ☐ Initial Registration (Firm) (Incl. 1 individual) ☐ Additional Individual User or Change

[Filing fee] [$100 - Incl. 1 individual] [$25]

Check: ☐ Retrieval *and/or* ☐ Filing

Use reverse side, additional sheets and/or form(s) as necessary. One **form must be submitted for each individual.** Obtain blank forms from BTCL [(202) 523-5796] and send completed form(s) in triplicate, with one copy of necessary documentation, and check for proper fee made payable to "Federal Maritime Commission," to:

ATFI Registration (BTCL)
Federal Maritime Commission
1100 L Street, N.W.
Washington, DC 20573

1. _____
[Contact Person (name and telephone number)]

_____
[Signature of authorized official and date]

A. FIRM

Org. Type: Other: _____ or
(Underline): Conf; Ocean; NVO; Domestic; Terminal; Agent/Pub.

FMC Org. # (if known): _____

_____
[Exact Org Name - as per corporate charter, etc.]

Address: _____
[Home office]

Phone/FAX ( ) _____ / _____

B. INDIVIDUAL

_____
[Name and title]

FMC Org. # (if known): _____

_____
[Exact Org Name - as per corporate charter, etc.]

Address: _____

Phone/FAX ( ) _____ / _____

ADDITIONAL INFORMATION REQUIRED FROM/PROVIDED BY FILERS

2. _____
[Name of person responsible for Organization Record Maintenance, if different from "B"]

3. Comments: _____

4. Attached: ☐ Necessary documentation [e.g., delegation(s) of authority. See 46 CFR 514.4(d).] ☐ Additional information.

[FOR ADMINISTRATIVE USE ONLY] *Initials (date):* _____

Tariff Owner is / is not a controlled carrier. *Anti-rebate certification is / is not current.*

ATFI Function	*Logon USERID*	*Initial Password(s)*
Org. Record Maintenance:		
Filing:		
Retrieval:		

Form FMC-63 (8/91)

Org Number: _____

federal register

Monday
September 9, 1991

Part III

Department of State

Bureau of Consular Affairs

22 CFR Part 43

Visas: Documentation of Immigrants; Final Rule

Registration for the AA-1 Immigrant Visa Program; Notice

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 43

[Public Notice 1477]

Visas: Documentation of Immigrants Under Section 132 of Public Law 101-649

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: This final rule amends part 43, title 22 of the Code of Federal Regulations to implement the provisions of section 132 of Public Law 101-649 which establishes a program to provide for the issuance of 40,000 visas for each year during fiscal years 1992, 1993, and 1994 to certain natives of foreign states which were designated as having been "adversely affected" within the meaning of section 314 of Public Law 99-603, as amended.

EFFECTIVE DATE: October 9, 1991.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, Department of State, Washington, DC 20522-0113; (202) 663-1184.

SUPPLEMENTARY INFORMATION:

Background

A proposed regulation was published in the **Federal Register** of June 4, 1991. That rule proposed regulations adding new subpart B to part 43, title 22 of the Code of Federal Regulations, in order to implement the provisions of section 132 of Public Law 101-649. The proposed rule at pp. 25387-25392 of the **Federal Register** gives a detailed discussion with regard to the provisions of section 132 of the Immigration Act of 1990 with respect to the definition of an alien who is qualified to apply for an immigrant visa under the provisions set forth in that section as a "native of a foreign state * * * which was identified as an adversely affected foreign state for the purposes of section 314 of the Immigration Reform and Control Act of 1986." The proposed rule also addressed the procedures required to process immigrant visa applications submitted by such aliens. During the comment period the Department received 56 comments. Collectively, the commenters raised 29 issues or questions.

Analysis of Comments

Confidentiality of Applications

Six commenters urged the Department to provide by regulation, or otherwise give a categorical assurance, that applications received would be used only for the purpose of the AA-1 program. All commenters were concerned that aliens who were potential competitors but were in the United States illegally might be deterred from competing unless they were confident that making an application would not result in disclosing their unauthorized presence in the United States for possible enforcement action. One commenter asserted that the Congress intended such a step by the Department.

The Department can find no statutory basis for establishing such confidentiality. Section 222(f) of the Immigration and Nationality Act, as amended, provides that the records of the Department of State and of diplomatic and consular offices relating to the issuance and refusal of visas shall be confidential and shall be used only for the formulation, amendment, administration and enforcement of the immigration and other laws of the United States. To that extent, the public may be assured that the applications will be kept confidential, but to no greater extent than that. It has consistently been the position of the Department that such records may properly be made available to other U.S. Government agencies, including the Immigration and Naturalization Service (INS), for law enforcement purposes.

The Department can find nothing in section 132 or elsewhere in Public Law 101-649 which would require or authorize taking a position with respect to applications for registration under section 132 inconsistent with this long-standing general position. That said, however, the Department also wishes to point out that it has no intention of furnishing any applications, or any information contained in them, to INS in the absence of a request for such action by that agency.

In this connection, the Department also wishes to point out that the same question arose in 1986-87 with respect to applications submitted under the NP-5 program. The Department's response at that time was the same. INS did not make such a request at that time. The Department cannot predict whether INS will make such a request at this time.

Length of Application Period

Four commenters urged that the application period be relatively lengthy—approximately one month—in order to give potential applicants more opportunity to compete. Given the fact that applications must, by law, be processed in chronological order, the Department does not believe that a lengthy application period will serve a useful purpose. As was the case with its predecessor—the NP-5 program—section 132 specifies that applications are to be processed in chronological order of receipt within an application period established for the purpose. Under the NP-5 program, virtually all, if not all, applicants whose applications could be registered for processing were received during the first day of the period. If, as the Department believes to be highly likely, the result will be the same with respect to the proposed application period for this program, the Department believes it would be unnecessary—even misleading—to provide an extended application period, as the commenters have urged. Assuming that all applications which can be processed for further consideration under the program are received on the first day of the period—or, at most, on the first two days—allowing the application period to drag on for a month would give applicants a false idea of the possibility of their selection and simply burden the Department with an even greater volume of unprocessable mail than would a shorter period. Accordingly, the Department will establish an application period of one week, as originally indicated.

Chronological Order of Processing

Closely allied with the comments discussed above concerning a longer application period were a series of comments strongly opposing the concept of chronological processing and otherwise questioning its desirability, even its legitimacy. The Department recognizes that the system created by section 132 and its predecessor, section 314 of Public Law 99-603, is an anomalous one and presents a disconcerting spectacle to the observer. The Department believes, however, that the statutory mandate is clear in this respect. Section 132 explicitly requires that the 40,000 visas available in each of the applicable fiscal years be made available to qualified applicants "in the chronological order in which they qualify." This language closely tracks that in section 314 of Public Law 99-603.

The origin of this language is clear enough to those who are familiar with the earlier history of our immigration system. Prior to the amendment of the INA in 1965 by Public Law 89-236, the Immigration Act of 1965, there existed a system under which an alien could register as a nonpreference immigrant without meeting and substantive requirements for registration. Under the pre-1965 system, an alien could register

as a nonpreference immigrant merely by communicating to a consular officer his or her desire to immigrate and providing necessary personal information—name, date and place of birth, current address. That system was abolished as part of the implementation of the 1965 Act because the labor certification provision—section 212(a)(14) of the INA—was amended to make it an affirmative requirement. Aliens, including nonpreference immigrants, who were subject to the labor certification requirement were excludable unless the Secretary of Labor certified that they were admissible. The system established to implement this change in the law provided that an alien could not be registered as a nonpreference immigrant unless he or she had obtained a labor certification or had established that he or she was not required to obtain a labor certification pursuant to Departmental regulations on this subject.

Section 314 of Public Law 99–603—and, therefore, section 132 of Public Law 101–649 also—had its origins in this system and its operational effects upon rates of immigration to the United States from certain countries, especially Ireland. By 1967 complaints arose that the new requirements effectively prevented immigration from Ireland since natives of Ireland had neither the close family relationships required to qualify for immigration as relatives nor the professional or occupational skills which would allow them to obtain labor certification and immigrate as workers.

Several bills were introduced between 1967 and 1973 which would have re-established the old "national origins" quota system for Ireland and other Western European countries using mathematical formulae to determine the size of each quota and would have exempted competitors for visas under those quotas from the requirements of section 212(a)(14). None of those bills was enacted and from 1973 until about 1984 or 1985 the issue was quiescent. At that time, it again became an active issue and the result was the inclusion of section 314 in Public Law 99–603, the Immigration Reform and Control Act of 1986.

As the Department pointed out in some detail in its discussions of the regulations implementing section 314 (the NP–5 program)—published at 52 FR 1447 (January 13, 1987) and 52 FR 17944 (May 13, 1987)—the Congress effectively resurrected for competitors under that program the old pre-1965 nonpreference registration system. As the Department explained at that time, under that system the alien's nonpreference priority date was established by the receipt as a consular office of the alien's communication expressing a desire to immigrate to the United States. During that period consular offices had a desk-top machine for date-stamping incoming mail which stamped not only the month, day, and year of receipt but also the hour and minute in Greenwich Mean Time (GMT). Including the hour and minute permitted the establishment of the chronological order of nonpreference applicants by hour and minute as well as by month, day, and year, to the extent that such a detailed ordering might be operationally necessary for immigrant visa quota number allocation purposes at any given time.

By using the phrase "strictly in the chronological order in which they qualify * * *" in section 314(b)(2) of Public Law 99–603 and the phrase "in the chronological order in which aliens apply for each fiscal year" in section 132(c) of Public Law 101–649, the Congress, as the Department sees it, clearly mandated a chronological order of processing modeled on the old pre-1965 nonpreference registration system. In this connection, it should be noted that one of the commenters on the NP–5 regulations urged that the Department select the NP–5 applicants by means of a drawing from among the applications received. The Department pointed out at that time (52 FR 17947, left-hand column) that it had considered that possibility and found the procedure established in the regulations more consistent with the requirements of section 314(b)(2).

Finally, it appears to the Department that the Congress must necessarily have considered and rejected possibility of establishing a selection at random under section 132. Section 3 of Public Law 100–658 established the so-called "OP–1" program—also informally referred to as the Berman diversity program. Section 3(b) explicitly required that applicants be processed "strictly in a random order * * *." Thus, when formulating Public Law 101–649 the Congress had before it two predecessor provisions—section 314 of Public Law 99–603 with its chronological order requirement and section 3 of Public Law 100–658 with its random order requirement.

As mentioned above, the Congress repeated the chronological order requirement in section 132. In addition, the Congress established in section 131 a permanent diversity provision which takes effect in the fiscal year following the last fiscal year of this program. This provision becomes section 203(c) of the INA. Section 203(e)(2) of the INA explicitly requires that visas under section 203(c) be made available "strictly in a random order established by the Secretary of State * * *."

For all of the foregoing reasons, the Department cannot accept the commenters proposal that there be some form of random selection of the applicants under this program. That said, however, the Department also believes that imposing the chronological order requirement was improvident. The old pre-1965 nonpreference registration system originated in the 1920s under the provisions of the Immigration Act of 1924 and was carried forward under the original 1952 version of the INA not to disappear until 1965, as previously mentioned. The system was an ongoing one for roughly forty years. Registrations once made were valid indefinitely unless the alien took, or failed to take, certain actions. Thus, there never occurred the kind of land-rush stampede for registration that the chronological order requirement under the NP–5 program created and which will in all likelihood recur under this program—not once, but three times. The Department finds it disturbing that such a deplorable situation should arise and that it is powerless to prevent it.

Multiple Applications

Fourteen commenters opposed the Department's failure to impose a restriction of one application per alien in its proposed regulations. Their arguments included the following—(1) allowing multiple applications favors wealthier applicants who can afford to expend larger sums on preparing and sending multiple applications or on hiring an attorney or other representative to do so for them; (2) allowing multiple applications makes potential applicants vulnerable to unscrupulous individuals who charge excessive fees; (3) allowing multiple applications increases the administrative burden on the Department; (4) allowing multiple applications is burdensome to the employers who will have to complete multiple copies of the offer of employment; and (5) allowing multiple applications is ecologically unsound as it will result in a vastly increased volume of waste paper.

The Department studied this question very carefully before proposing to allow multiple applications in its notice of proposed rulemaking. There were two primary issues to be resolved, as the Department saw it. The first was whether there was a defensible argument in support of a limitation on the number of applications per alien in the absence of any statutory basis for such a limitation. The second was

whether such a limitation was compatible with the chronological order of processing requirement.

The history of this issue goes back to early 1987 and the implementation of the original NP-5 program. As was pointed out in the **SUPPLEMENTARY INFORMATION** with the proposed rule, no limitation on the number of applications was imposed under the NP-5 program. This fact, together with the frantic nature of the application period and the rather unseemly spectacle of thousands of applicants and their representatives going through bizarre gyrations in an effort to guarantee that their applications were processed early enough to qualify did not escape the attention of the Congress. As a result, section 3 of Public Law 100-658, which established the OP-1 "Berman Diversity" program was substantially different. Section 3 imposed an express limit of one application per alien and disqualified any alien who submitted more than one. In addition, that section required that the selection be in a random order rather than chronological. This change was clearly in reaction to the spectacle which the NP-5 procedure had created. Subsequently, at a hearing held in early 1990 by the House Judiciary Subcommittee on Immigration a Department witness was asked by a Subcommittee member which of the two systems—the NP-5 system or the OP-1 system—the Department found preferable. The Department witness expressed a preference for the OP-1 system. See, in this connection, *Hearings Before the Subcommittee on Immigration, Refugees, and International Law, One Hundred and First Congress, Second Session, on S. 358, H.R. 672, H.R. 2448, and H.R. 2646, Immigration Act of 1989, February 21, 1990, Serial No. 21 (Part 2)*, at page 63.

In light of that background, an examination of sections 132 and 131 becomes even more meaningful than otherwise might be the case. Section 131—the permanent diversity provision which takes effect in fiscal year 1995 following expiration of section 132, the transitional diversity program—explicitly requires selection in a random manner and explicitly imposes a limit of one application per alien with the same provision for disqualification as was contained in section 3 of Public Law 101-658. Section 132 contains neither provision. On this basis, the Department has concluded, for better or for worse, that it has no alternative but to allow multiple applications under this program.

In addition, the Department finds puzzling the objection that allowing multiple applications favors wealthier applicants over poorer ones. There is perhaps a point at which this could become true. Nevertheless, the Department estimates the cost to an applicant in the United States of submitting 100 applications at about $60—$29 for postage; $30 in photocopying costs and $2 or $3 for the necessary envelopes. Considering that the fee for filing a petition for immediate relative or preference status is $75, the fee for the processing and issuance of an immigrant visa is $150, and the fee for filing an application for adjustment of status is $120, the Department cannot entirely understand this objection.

The objection that allowing multiple applications favors aliens in the U.S. over aliens abroad is equally puzzling since an alien abroad could just as easily mail a large number of applications as could an alien here.

A more troubling aspect of this situation is the objection that allowing multiple applications enables unscrupulous individuals to prey upon unsuspecting aliens, charging them exorbitant fees and luring them into paying such fees by intimations that they somehow can assure success. The Department agrees with the commenters on this issue up to a point, but not entirely. It is the Department's perception that this results more from the inherent nature of the program than from the precise details of its operation, and it is this perception which is so troubling.

The very existence of a program, success in which is based upon the uncertainties of the postal system rather than upon a substantive consideration of the alien's qualifications as a worker, refugee, or relative, inherently creates this situation. With respect to the multiple application aspect of the program, the Department believes that limiting aliens to a single application could actually increase the ability of unscrupulous individuals to prey upon them. Given the chronological order requirement, a limitation to one application per alien could dramatically increase the force of representations that the individual can guarantee success. If the applicant knows that he or she can send only one application, he or she is far more likely to feel attracted by overt or implied guarantees of success than otherwise.

With respect to the burden upon the Department, the commenters are correct that the Department found the OP-1 system less burdensome than the NP-5 system. The NP-5 system is, however, administrable, as was shown by the fact that the Department managed to make the original NP-5 program work.

Firm Commitment for Employment

By far the largest number of comments concerned the offer of employment requirement. A number of commenters had objections; many had questions relating to the specifics of the requirement. The Department will first discuss the objections and then address the questions.

Eight comments opposed the proposal to require submission of the offer of employment with the registration application. After careful consideration of the objections raised, the Department has concluded that the offer of employment should not be required as a part of the initial application for registration and is amending § 43.13(c) to delete the requirement that the application for registration include an offer of employment.

The firm commitment for employment will be required only of those applicants selected for further processing and will be required to be presented only at the time of the applicant's formal interview for visa issuance (or refusal). A new § 43.17 is being added to provide that an applicant selected for further processing under the AA-1 program will be deemed to be ineligible under section 212(a)(4) of the INA—the public charge exclusion—if he or she does not precent a firm commitment for employment, as defined in the regulations, at the time of final action on his or her AA-1 immigrant visa application.

The objections raised to the proposal to require the offer of employment at the time of registration were of several kinds. One commenter asserted that this requirement was inconsistent with the statute itself. This commenter acknowledged that the statutory text does not address the question, but directed the Department's attention to the Conference Report—House Report 101-955—which states (at p. 122) that "(i)n order to apply for a visa, a firm offer of employment by a U.S. employer must accompany the application." This commenter took this statement to be dispositive of the issue. The Department does not agree that this statement, standing alone, is dispositive, but does agree, upon further review of the legislative history, that the statute can be interpreted either way.

Other commenters objected to this proposal on other grounds—that it would unfairly benefit aliens in the United States, that it would burden employers unduly, and that it would encourage the fabrication of fraudulent employment offers. Taking these

concerns into consideration and upon further review, the Department has made the change described above.

One commenter strongly opposed the Department's proposed definition of a "firm commitment for employment for at least one year (beginning on the date of admission for permanent residence)." This commenter insisted that the proposed definition "eviscerated" the requirement by treating any offer of employment that was not, by its express terms, limited to a period of less than one year as meeting this requirement. The commenter dismissed the Department's assertion that commitments as to the length of employment are not part of normal hiring practices in this country and cited academia as an example. It appears to be true that faculty members at institutions of higher learning generally are either in tenured positions or have contracts of employment for fixed terms, not infrequently one year. The Department's understanding, however, is that this tends to be an exception rather than a rule. It is also the Department's understanding that there have been court decisions in which an employment agreement has been held to be an implied contract even though it did not appear on its face to constitute a contract of employment. The Department understands unofficially that fewer than ten percent of employees in the United States overall are employed pursuant to contracts of employment guaranteeing a fixed length of employment.

The commenter contends that the Congress clearly intended such a guarantee and insists that the Department give effect thereto. The Department believes that the Congress intended no such thing. Definitionally, a "commitment" and a "guarantee" are two different things. In addition, an examination of the House Judiciary Committee's comments (in House Report 101-723 at pp. 75-6) on this subject is enlightening. As previously mentioned, section 201 would have authorized adjustment of status for natives of qualifying countries who had been in the United States illegally since prior to January 1, 1990, and would have granted them permanent residence conditionally, with a requirement that they qualify for removal of the condition after one year. In discussing the "firm commitment" requirement of section 201 of H.R. 4300 (the provision from which section 132 evolved) the Committee stated "(t)he documentation that must be submitted to support the job commitment should be a letter from a bona fide employer communicating a willingness to hire the alien." Also, the Report continues by saying that "the Committee believes that the conditional resident need only demonstrate that he or she has been self-sustaining over the one-year period in order for the conditional status to be removed."

The Department finds in these statements very strong support for the proposition that the Congress did not intend to impose a higher standard on offers of employment under section 132 than upon offers of employment used in the immigration process generally. Documentation consisting of a letter communicating the employer's willingness to hire the alien falls substantively short of a guarantee to retain the employee for a specified time period—one year or any other. A statement that removal of the condition upon permanent residence would require only a showing that the alien had been self-sustaining during the one-year period cannot be said to reflect any intent that the alien remain with any particular employer during the period.

In summary, the Department believes that its proposed definition of the phrase "firm commitment for employment in the United States for a period of at least 1 year * * *" is a fair one, giving appropriate effect to the intent of the Congress in including that phrase in the statute.

In addition to the objections discussed above, the Department received a series of comments requesting clarification of the details of the offer of employment requirement. The Department will now address these questions—

(1) Can a self-employed alien meet the requirement by presenting evidence of self-employment? The Department is of the opinion that evidence of existing self-employment will meet the requirement. Evidence of an intention to enter into self-employment in the future, even in the immediate future, will not qualify.

(2) Must the employment be full-time? It is the Department's opinion that the employment must be full-time employment. In this connection, the Department notes the statement in House Report 101-723 at p. 75 that "two part-time positions can be construed as full-time employment provided the alien submits letters from each employer to support the job commitment." This statement leads the Department to conclude that the Congress intended that competitors present evidence of full-time employment rather than part-time employment.

(3) Could an alien meet the requirement by presenting evidence of two or more part-time jobs which, taken together, constitute full-time employment? It is the opinion of the Department that two or more part-time jobs will meet the requirement if, taken together, they constitute full-time employment. In this connection, the Department refers to the statement from House Report 101-723, quoted in the answer to question #2 above. In addition, the Department does not believe that there is a reason to limit such cases to those in which the alien has only two part-time jobs. While cases in which the alien has more than two part-time jobs may be rare, there appears to be no reason to exclude them from competition.

(4) Are there any restrictions on who may make an offer of employment to an alien for this purpose. The statute requires only that the employment be in the United States. It imposes no other requirements relative to the employer. Thus, any employment will meet the requirement, provided the actual place of work will be physically in the United States. The employer could be any type of business or commercial establishment, an institution of higher learning or any other non-profit organization, a private citizen, a governmental or quasi-governmental entity or an international organization.

(5) How much detail must be included in the offer of employment, including salary, nature of job duties, etc.? The Department believes that setting too many requirements in this respect will unduly complicate the process and give rise to needless pursuit of technicalities. In general, the job offer must include enough detail to permit the reader to conclude that the offer is made in good faith, that the job offered actually exists, that it is an on-going job which is not time-limited by its nature. In addition, where the alien presents only one offer of employment, it must be clear that the job offered is a full-time one.

Inquiries Concerning Registration

Two commenters objected to a statement in the Supplementary Information that, as was the case with the NP-5 and OP-1 programs, the Visa Office of the Department will not entertain inquiries about possible registration. The Department would like to be able to respond to such requests, but simply has not the wherewithal to do so. Given the severe resource constraints under which the Department of State is operating and given the effect of those constraints upon the Visa Office, a stated policy of responding to such requests would simply overwhelm both the telephone inquiries and written inquiries staffs of the Visa Office. The

risk of not being able to respond adequately to AA-1 related inquiries—and the consequent impact on normal public-liaison operations—is simply too great to be incurred. The Department can only regret its inability to accommodate the commenters' request.

Form of Mailing of Applications for Registration

Several commenters complained that the Department will not accept mail submitted by methods requiring a signed receipt from the recipient. Their comments were based on the fact that it seemed unfair to provide for processing in chronological order of receipt without allowing applicants to assure themselves of timely receipt by means of special handling mail. Another commenter questioned whether applications might be sent in volume at a bulk mail rate.

The Department wishes to explain what is intended by its restriction on methods of submission of applications. First, when the NP-5 program was thrust upon the Department unexpectedly in late 1986, a decision had to be made about methods of submission. Initially, consideration was given to permitting applicants to submit their applications to posts abroad, either by mail or in person. Almost immediately, it became apparent that system had the potential to create serious problems of physical security and crowd control, at least at some posts abroad, and that idea was quickly discarded as unworkable.

It was then decided that submission of applications would be permitted by mail only, rather than in person anywhere. That decision having been made, it then remained to decide where the applications should be submitted—to a single location, to individual posts abroad, to regional locations. Ultimately, it was decided that all applications should be submitted to a single location. At that point, discussions with the U.S. Postal Service began.

Those discussions resulted in the establishment of a special mailing address with a unique Zip Code for this purpose. Then the question of chronological handling came up. In this connection, there were at that time questions about various methods of delivery. It became apparent that allowing for various methods of delivery would interfere with the effort to preserve chronological processing to the extent operationally possible. Only a single delivery system would make it possible to maintain any sort of chronological order. Thus, the Department decided that applications delivered other than by regular mail would not be given consideration rather than try to create a system for integrating them into the chronological processing system, which would have been both complex and time-consuming.

Consideration of this issue warrants further comment on the issue of chronological processing and certain comments received about it. One commenter opined that it was not accurate to insist that the processing would be purely chronological since elements of chance could affect the order in which the mail is processed and delivered to representatives of the Department.

In a sense, the commenter is correct, for chance can always play its role in events. A mail sorting clerk can suddenly become ill and fail to report for work on a critical day, thus affecting the facility's ability to sort mail. A mail truck on its way to the facility from a local airport can break down, be delayed by traffic or even be involved in a traffic accident, thereby delaying the arrival of mail sacks at the facility by hours and thus changing entirely the chronological order in which applications in those mail sacks are processed at the facility. An airplane due to depart from a foreign country at a certain time carrying mail containing applications for this program could be delayed by mechanical problems, weather conditions, or for other reasons, producing the same result. Recently, for example, air controllers in France have engaged in sudden one-day work stoppages, disrupting air traffic for that day throughout Western Europe. Another such work stoppage on a critical day could have a profound effect upon the chronological order of applications from Western Europe generally.

While chance events such as are described above can occur and can, as mentioned, profoundly affect certain individuals whose applications may be delayed by them, the Department sees this as unavoidable. When chronological order is clearly mandated by statute, as is the case here, the possibility of chance affecting the chronological listing of any individual application is inherent in the system.

Another commenter on the chronological system made a comment which the Department finds very disturbing. The commenter disclaimed any intention of implying that USPS employees would engage in improprieties in the handling of mail destined to the designated address but asserted that a belief might arise that improprieties had occurred. The commenter therefore urged that the Department, in conjunction with USPS, develop regulations for the manner in which USPS employees handle and sort mail destined for the designated AA-1 program postal address.

The Department's position is that, as a matter of law, USPS, like other government entities, is entitled to a presumption of regularity in its conduct of its official business. Moreover, the Department does not consider it appropriate to create regulations for the handling of mail within the USPS system. USPS has established procedures for this purpose. The Department presumes that it will follow them in good faith in this instance as it presumptively does in all cases

Mailing Address

Several commenters asked about the mailing address. Specifically, the commenters asked whether the address of an alien's attorney or other representative could be used and requested that this matter be made explicit. The Department wishes to make it clear that the only reason for requiring that an applicant include a current mailing address is to ensure that notifications of selection will reach those selected. The applicant can provide any mailing address he or she might wish. It is of no concern to the Department whether that address is the applicant's residence, a post office box, the address of a friend or relative, the address of the applicant's attorney or other representative. The Department's only concern is that the address be one at which the applicant can have an assurance of receiving mail addressed to him or her. The only further comment the Department believes it necessary to make is that each applicant should be confident that mail directed to the address provided will actually come into his or her possession on a timely basis.

Foreign State Chargeability

Several commenters asked that the Department elaborate further on the question of foreign state chargeability as it relates to entitlement to compete for consideration in the AA-1 program. The Department is willing to do so and will discuss the matter below. The Department warns the public, however, that the subject is a complex one and that the discussion below may be confusing in spite of efforts to make it as simple as possible.

Sections 202 (a) and (b) of the INA provide the basis for the concept of foreign state chargeability by establishing a limit on the number of visas that may be made available to natives of any foreign state or dependent area under the overall

numerical limitations and by defining foreign state as an "independent country, self-governing dominion, mandated territory, and territory under the international trusteeship system of the United Nations, except the United States and its outlying possessions." Section 202(b) also provides that "all other inhabited lands shall be attributed to a foreign state specified by the Secretary of State." Section 202(c) completes the rules of foreign state chargeability by providing that an alien "born in a colony or other component or dependent area of a foreign state shall be chargeable for the purpose of the limitation set forth in subsection (a), to the foreign state."

The INA does not define the word "native" but the Department has interpreted it to mean "born in" since the enactment of the INA in 1952. The word "native" in the INA replaced an explicit definition contained in section 11 of the Immigration Act of 1924. In this connection, both House Report 1365 of 2/14/52 (at p. 38) and Senate Report 1137 of 1/29/52 (at p. 15) contain identical statements on this subject, as follows—"The method for determining the appropriate quota to which an alien is to be charged is set forth in section 202; and, as in existing law, the place of birth is the determining factor with certain well-defined exceptions * * *." Thus, the primary rule is that foreign state chargeability is determined by place of birth.

Before discussing the exceptions to the primary rule, the Department wishes to discuss the question of territorial jurisdiction over a particular place of birth. The international status of pieces of territory may change from time to time, as a result of wars, revolutions, international agreements or other political events. Many such changes were the result of both World War I and World II. Thus, for example, an individual born in Prague in 1914 was born in what was then the Austro-Hungarian Empire. The Empire ceased to exist in 1918–19 and from its territory were formed a number of countries, including Czechoslovakia. The United States recognized, and continues to recognize, Czechoslovakia as an independent country. Thus, if the individual in question here—born in Prague in 1914—were an applicant for an immigrant visa today, he or she would be chargeable for immigration purposes to Czechoslovakia. The fact that his or her place of birth was in the Austro-Hungarian Empire at the time of birth would be absolutely irrelevant for this purpose.

The example given above illustrates the general rule which has always been applied in the administration of the rules of foreign state chargeability—the foreign state to which an intending immigrant is chargeable for immigration purposes is that foreign state which the United States has recognized *de jure* as having jurisdiction over the place of birth as of the time of the application for a visa. Several specific questions on this issue were submitted by commenters. One had to do with potential applicants for the AA–1 program who are ethnic Poles but who were born in territory transferred from Poland to the U.S.S.R. after World War II. The question was whether such applicants are entitled to compete in the AA–1 program—Poland being a qualifying country; the USSR not being a qualifying country. The answer to the question is no. Such applicants are not entitled to compete, since the United States has recognized *de jure* that transfer of territory. For immigration purposes, such aliens are natives of the U.S.S.R. not of Poland and are, thus, not natives of a qualifying country.

A second question related to this issue had to do with the status of the Channel Islands and the Isle of Man as part of the United Kingdom for this purpose. The Department wishes to assure the commenter that the Channel Islands and the Isle of Man are considered for immigration purposes to be a part of the United Kingdom of Great Britain and Northern Ireland. Thus, a native of one of the Channel Islands or of the Isle of Man is a native of a qualifying country for this purpose.

One can now turn to the exceptions to the "place of birth" rule. There are four such exceptions—(1) a spouse can be charged to the foreign state of the other spouse; (2) a child can be charged to the foreign state of either parent; (3) an alien born in a foreign state in which neither parent had a residence at that time of birth may be charged to the foreign state of either parent; and (4) an alien born in the United States may be charged to the country of the alien's current citizenship or, if the alien is stateless, to the country of the alien's residence.

The first two exceptions are self-explanatory. The third requires some elaboration. It is referred to informally as the "missionary" clause. As this exception has been interpreted, it applies not only when the birth occurred during a short temporary visit to the country of birth but also when the parents were in the country of birth for a longer period provided they were there on orders of a foreign principal. Examples of situations in which this exception has been applied includes a child born to religious missionaries sent by their church organization to the country in which the child was born. (Hence, the use of the phrase "missionary clause" to refer to this exception.) Other examples might include a child born in a country while the parents were stationed there on order of their government or while the parents were assigned to an office of a foreign corporation.

The fourth exception also appears to be self-explanatory except that the circumstances in which an individual born in the United States might not be a United States citizen may not be entirely clear. There are two such circumstances. First, a child born in United States while the parents enjoyed full diplomatic immunity as foreign diplomats does not acquire U.S. citizenship because of birth here. Second, a person who did acquire U.S. citizenship by birth in the United States may lose citizenship, either by voluntarily renouncing it or in certain other circumstances.

The Department hopes that the foregoing explanation will clarify the question of foreign state chargeability as it relates to the AA–1 program. The proposed definition of "native" for the purposes of this program allows both aliens born in a qualifying country and aliens who can claim alternate foreign state chargeability to a qualifying country to compete. This same rule was applied in the original NP–5 program and in the OP–1 program. The proposed regulatory definition was intended to emphasize this point and reduce the number of inquiries about the issue. The Department hopes that the regulatory definition and the explanation given above will eliminate any lingering questions. Two final points bear emphasis—

(1) In order to benefit from alternate foreign state chargeability under the AA–1 program, the basis for claiming alternate foreign state chargeability must exist at the time the application for registration is submitted. A marriage entered into after the application period has ended to a native of a qualifying country will not cure the fact that at the time of the application period the alien did not have a claim to alternate foreign state chargeability.

(2) An applicant who claims entitlement because of alternate foreign state chargeability must include a statement to that effect on the application for registration. Without such a statement, the employees processing the registration applications will have no way of knowing that alternate foreign state chargeability

applies and will put the application aside as a non-qualifying application.

Whether Status in the United States is a Factor

One commenter asked whether status in the United States was a factor in determining entitlement to compete under the AA–1 program. Specifically, the commenter asked whether an alien granted Temporary Protected States (TPS) could compete. The Department believes it clear from the statute itself and from the proposed regulations that whether or not an alien is in the United States and, if so, what status, if any, the alien might have is absolutely irrelevant for this purpose. If the alien is a native of a qualifying country, as defined in the regulations, the alien is entitled to compete.

Advance Notice of Application Period and Publicity Concerning the Program

Several commenters urged that there be at least six weeks between the formal announcement of the application period and its actual commencement and that there be significant publicity of the details. The Department agrees on both counts. The Department has scheduled the application period so as to leave six weeks between the publication of this final rule and the accompanying public notice. In addition, the Department is taking the following steps to ensure the maximum possible publicity, both within the United States and abroad—

(1) The text of the Public Notice is being transmitted to all posts abroad by telegram with a request that posts abroad disseminate it within their areas of jurisdiction, both in English and the local language, as appropriate.

(2) The text of the notice is being sent to USIA for distribution through its media channels abroad.

(3) The text of the notice is being distributed to the media through the Department's Press Office.

(4) Copies of the notice are being sent to all Congressional offices in Washington with a request that they be communicated to the district offices of the members for dissemination in the communities served by those offices.

(5) The substance of the information is being included in the recorded message which the Visa Office has prepared for this purpose. The recorded message can be heard by calling (202) 663–1600.

(6) Copies of the public notice are being transmitted to publications of general circulation which specialize in immigration in the expectation that they will publish the notice.

The Department hopes that these steps will suffice to give the information adequate dissemination, both within the United States and abroad.

Country of Birth on Mailing Envelope

Several commenters objected to the requirement that applicants indicate the country of which they were natives on the upper left-hand corner of the mailing envelope. The commenters did not object to requiring natives of Ireland to do so, but urged that other applicants not do so. The Department is mystified that so simple a step could be the subject of comment one way or another. As explained in the discussion of the proposed rule, the only reason for establishing this requirement is to facilitate processing of the applications if the order in which the mail is received requires opening additional envelopes to create a list of natives of Ireland large enough to ensure that the 40 percent minimum allocation of visas to natives of Ireland is achieved.

It appears to the Department that some time could be saved in finding sufficient natives of Ireland for registration at a point when sufficient natives of other countries have been registered if the name of the country were on the outside of the envelope. That is the only reason for including this requirement and the Department does not believe that there is any substantive reason to abandon it.

Allocation for Natives of Ireland

One commenter complained that the allocation of at least 40 percent of the available visas to natives of Ireland was unfair. Whether or not that is so is of no consequence, since the requirement is statutory and is not one which the Department could modify or eliminate by regulation.

Notifications of Those Registered

Several commenters urged that the notification letters sent to those registered (the Packet 3 letters) make clear that not everyone who receives a Packet 3 letter will receive a visa, because more than 40,000 aliens will be registered and notified, as explained in the discussion of the proposed rule. The Department will see to it that this information is contained in a supplemental statement sent with the Packet 3 letter.

List of Qualifying Countries

One commenter pointed out that the Department had not included the list of qualifying countries in the proposed rule. The Department apologizes for this oversight. The list of qualifying countries is—

Albania	Iceland
Algeria	Indonesia
Argentina	Ireland
Austria	Italy
Belgium	Japan
Bermuda	Latvia
Czechoslovakia	Liechtenstein
Denmark	Lithuania
Estonia	Luxembourg
Finland	Monaco
France	New Caledonia
Germany (Federal Republic of)	Netherlands
	Norway
Gibraltar	Poland
Great Britain and Northern Ireland	San Marino
	Sweden
Guadeloupe	Switzerland
Hungary	Tunisia

In this connection, the Department will address one comment on a related subject. One commenter asserted that the use of the word "country" in section 132 as opposed to the words "foreign state" in section 314 of Public Law 99–603 (the NP–5 program) represented a substantive change pursuant to which Northern Ireland could, and should be recognized as a separate entity for purposes of the AA–1 program. The Department finds two flaws in the commenter's position. First, in House Report 101–723 at p. 77 the Committee listed the qualifying countries. With one exception, it is the list printed above. The exception is that the provinces that made up the German Democratic Republic have entered and been incorporated into the Federal Republic of Germany. Thus, there is one Germany. In addition, in section 131 of Public Law 101–649, which creates in section 203(c) a new permanent diversity program to begin in fiscal year 1995 the Congress expressly provided that "(o)nly for purposes of administering the diversity program under this subsection. Northern Ireland shall be treated as a separate foreign state, * * *" In light of the foregoing, the Department finds no basis for treating Northern Ireland separately under the AA–1 program.

Age Requirements for Applicants

Several commenters asked whether there was a minimum age below which an alien was prevented from applying for registration or would be prevented from receiving an immigrant visa, if selected for processing. The apparent reason for these inquiries is the fact that, under the NP–5 program, there was a minimum age below which an applicant could not be issued an immigrant visa unless accompanying or following to join a parent. This rule had to be applied because of a provision in what was then section 203(a)(7) of the INA—providing for the nonpreference immigrant class.

The provision referred to above has been eliminated from the INA effective October 1, 1991, by Public Law 101-649. In fact, the new immigrant system established effective October 1 contains no nonpreference class at all. Thus, that provision will not apply in the AA-1 program. On the other hand, the offer of employment requirement of the AA-1 program, which was not included in the NP-5 program, will produce very much the same effect. Offers of employment, in order to meet the requirements under this program, must be made in good faith. An offer of employment made to an alien who is below the legal working age will not be deemed to have been made in good faith since acting upon that offer of employment would constitute a violation of law. As a result, effectively, aliens below the legal working age in the United States will not be able to meet the requirements for competition.

Date of Birth of the Principal Applicant

Several commenters pointed out that the proposed regulations—§ 43.13(c)—do not require that the principal applicant include date of birth as an item of information, but do require date of birth as part of the information on a spouse or child. Failure to include date of birth as part of the information on the principal applicant was purely accidental and will be corrected in the final rule.

Derogation of the Rulemaking Process

Three commenters expressed concern at what they perceived to be a flaw in the rulemaking process which was reflected in a circular telegram sent by the Department to all posts abroad informing them of the publication of the notice of proposed rulemaking and the proposals it contained. This circular telegram (referred to as an ALDAC) was made available to the public through standard procedures and came to the attention of the commenters during the comment period. They interpreted its wording to reflect a fixed intention of the Department to publish the final rule without substantive change regardless of the merits of the comments which might be received.

The Department can only disclaim any such intention and regret that possibly infelicitous phrasing should have produced such an impression.

Processing of Aliens Selected

One commenter expressed concern that some aliens selected for processing might lose out in the long run because of delays in the processing of their applications, either by a consular post or by INS in those cases in which the selected alien is entitled to apply for adjustment of status. The commenter expressed this concern because the alien selected must complete all necessary processing by the end of the fiscal year. The Department understands that this concern should exist and recognizes that it will exist in respect of each of the fiscal years of operation of this program.

The Department assures this commenter that every effort will be made, within the limits of existing resource constraints, to ensure that aliens selected for processing whose cases are processed by consular posts do not lose their entitlement because of delays on our part. Insofar as the concern relates to the processing of adjustment of status applications by INS for those eligible for adjustment, the commenter may wish to make the same point to INS in some appropriate manner.

Level of Fees

One commenter felt the proposed fee was too low and urged that it be raised to $50 or $100. As the Department reads the pertinent portion of section 132 the Congress intends that the fee cover the cost of administering the program. The fee proposed—$20—per registration was based upon an estimated cost of $650,000 for the administration of the program. The contract price, as determined in the standard government contracting process which the Department followed in this case, is approximately $900,000. This results in an increase of the fee to $25 per case. The Department cannot accept the commenter's recommendation that the fee be set at a higher level for other purposes, as doing so would violate the Congress' expressed intent that the fee be such as to recover costs.

Accordingly, the proposed rule is adopted with minor modifications as indicated in the preamble.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The collection of information requirement in this rule with regard to form OF-230, Application for Immigrant Visa and Alien Registration, has been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act of 1980. In addition, a notice containing information on how to register for the AA-1 program is being published simultaneously with this final rule elsewhere in this issue of the **Federal Register**.

List of Subjects in 22 CFR Part 43

Aliens, Adversely affected country, Immigrants, Numerical limitations.

Final Rule

In view of the foregoing, Title 22 of the Code of Federal Regulations, subchapter E-VISAS, part 43 is amended as follows:

PART 43—[AMENDED]

1. The authority citation for part 43 is revised to read as follows:

Authority: 8 U.S.C. 1104; 8 U.S.C. 1153 note.

2. The title to part 43 is revised and a new subpart A heading is added above § 43.1 to read as follows:

PART 43—VISAS: DOCUMENTATION OF IMMIGRANTS

Subpart A—Documentation of Immigrants Under Section 314 of Pub. L. 99-603

* * * * *

3. New subpart B is added to read as follows:

Subpart B—Documentation of Immigrants Under Section 132 of Public Law 101-649

Sec.
43.11 General.
43.12 Definitions.
43.13 Registration.
43.14 Order of consideration.
43.15 Control of numerical limitation.
43.16 Fees.
43.17 Eligibility to receive a visa.

Subpart B—Documentation of Immigrants Under Section 132 of Public Law 101-649

§ 43.11 General.

Except as specifically provided in this subpart, the provisions of the Immigration and Nationality Act, as amended, and of parts 40 and 42 of this chapter shall apply to application for, consideration of, and issuance or refusal of, immigrant visas under section 132 of Public Law 101-649.

§ 43.12 Definitions.

The following definitions shall be applicable to this part:

(a) *Adversely affected foreign state* shall have the meaning ascribed to the term "adversely affected country" in § 43.2 of subpart A of this part;

(b) A *firm commitment for employment in the United States for a period of at least one year* shall mean an offer of employment from an employer in the United States which specifies that the place of employment is within the United States and which does not, by its terms, limit the duration of

the offered employment to a period of less than one year;

(c) *Native* shall mean born within the territory of a foreign state, or entitled to be charged for immigration purposes to that foreign state pursuant to section 202(b) of the Immigration and Nationality Act, as amended.

§ 43.13 Registration.

(a) *Limitations on registration.* An alien shall not be eligible to register under this section unless he or she is a native of an adversely affected foreign state (as defined in § 43.12 of this subpart) other than Canada. Applications for registration shall be made separately for each of the Fiscal Years 1992, 1993, and 1994, during application periods established by the Department for such purpose. An application for registration submitted during the application period for a fiscal year shall not be retained for consideration with respect to any fiscal year other than the one for which it was submitted. The dates of each application period held pursuant to this section shall be announced by the Department of State by publishing a Public Notice in the **Federal Register** and through such other means as will ensure wide dissemination of the information, both within the United States and elsewhere. Applications for registration will be accepted only between 12:01 a.m. on the first day of the application period and Midnight of the last day of the application period. Applications received at any other time will not be considered.

(b) *Place of Registration.* An alien eligible to register pursuant to paragraph (a) of this section who desires to register as an applicant for a visa under section 132 of Public Law 101–649 shall apply for registration by mail. The address to which such applications shall be submitted shall be included in the announcement of the application period provided for in paragraph (a) of this section. Hand-delivered applications, telegrams, or envelopes sent by any means requiring any form of acknowledgement of receipt by the recipient will not be accepted. Only one application may be submitted in each envelope and, if an envelope contains two or more applications, only the first application removed from the envelope will be accepted and processed.

(c) *Application*—(1) *Form of application.* An application for registration under this section shall consist of a sheet of paper on which shall be typed or legibly printed in the Roman alphabet the applicant's name, date and place of birth (including city and county, province or other political subdivision, and country), name(s), date(s) and place(s) of birth of spouse and child(ren), if any, a current mailing address, and location of consular office nearest to current residence or, if in the United States, nearest to last foreign residence prior to entry into the U.S.

(2) *Marking of mailing envelope.* An alien who submits an application as provided in this subpart shall type or print legibly in the Roman alphabet the name of the adversely affected country of which he or she is a native on the upper left-hand corner of the front of the envelope in which the application is mailed.

(d) *Derivative registration.* An application for registration submitted in accordance with paragraphs (a) and (b) of this section shall be considered to include automatically the spouse or child of the applicant, whether or not such spouse or child is named in the application if, in the case of a spouse, the marriage to the applicant took place prior to the applicant's admission for permanent residence or, in the case of a child, the child is the issue of a marriage which took place prior to the applicant's admission to the United States for permanent residence.

(e) *Priority date.* An alien's priority date for consideration of his or her application under this subpart shall be the date, hour, minute, and second (within the application periods provided for in paragraph (a) of this section) of the receipt and processing of the application by the Visa Office of the Department of State.

(f) *Waiting lists.* The Department shall establish two waiting lists of applicants whose applications have been received and processed for consideration under this subpart. Both lists shall be maintained in the chronological order of priority dates established as provided in paragraph (e) of this section. One list shall consist of applicants who are natives of Ireland. The other list shall consist of all applicants who are natives of adversely affected foreign states.

§ 43.14 Order of consideration.

(a) *Registration.* Applicants shall be registered for further consideration under this Subpart in the chronological order in which their applications are received from the United States Postal Service mail-handling facility. Applicants shall be registered only in a number sufficient to ensure usage of all immigrant visa numbers available during the fiscal year for which the application period is held and to ensure that not fewer than 40 percent of such visa numbers are made available to natives of Ireland.

(b) *Further processing.* The Department shall inform applicants registered pursuant to paragraph (a) of this section of the steps necessary to meet the requirements of INA 222(b) in order to apply formally for an immigrant visa.

§ 43.15 Control of numerical limitation.

(a) *Centralized Control.* Centralized control of the numerical limitation specified in section 132(a) of Public Law 101–649 is established in the Department. In order to effect this control, the Department shall limit the number of immigrant visas and the number of adjustments of status that may be granted to aliens applying under section 132 of Public Law 101–649 to a number (1) not to exceed 40,000 each in fiscal years 1992, 1993, or 1994 and (2) not to exceed, in any month of any such fiscal year, 4,000 plus any balance remaining from authorizations for preceding months in the same fiscal year.

(b) *Allocation of immigrant visa numbers.* Within the limitations specified in paragraph (a) of this section, the Department shall allocate immigrant visa numbers for use in connection with the issuance of immigrant visas and the granting of adjustment of status. Such allocation shall be based upon the chronological order of priority dates of applicants as established pursuant to § 43.13(e) of this subpart, except that allocations shall be made in such a manner as to ensure that, to the extent natives of Ireland have become documentarily qualified, not less than 40 percent of the visa numbers allocated during any fiscal year are allocated to natives of Ireland. To the extent that allocations of visa numbers to natives of Ireland must be made separately to ensure compliance with the requirement that at least 40 percent of the total be allocated to such aliens, such allocations shall also be made to such aliens in the chronological order of their priority dates.

§ 43.16 Fees.

(a) *Applicant for immigrant visa.* An applicant who is registered for immigrant visa processing pursuant to § 43.13 of this subpart, who receives from the Department notification of the steps necessary to apply formally for an immigrant visa, and who will apply for an immigrant visa shall remit a fee of $25 (or its equivalent in the currency of the country in which such consular office is located) to the consular office at which the formal immigrant visa application will be made. The fee shall be $25 regardless of whether or not the

applicant has a spouse and/or child(ren) who intend to accompany or follow to join the applicant. The remittance shall be negotiable in such form as the Department shall specify and shall be remitted to the consular office with the completed Form OF-230, Application for Immigrant Visa and Alien Registration, Part I—Biographic Data. Consular officers shall give no further consideration to an application under this subpart until the fee specified herein has been received.

(b) *Applicant for adjustment of status.* An applicant who is registered for immigrant visa processing pursuant to § 43.13 of this subpart and who receives notification of the steps necessary to apply formally for an immigrant visa, but intends to apply to the Immigration and Naturalization Service for adjustment of status under section 245 of the Immigration and Nationality Act, shall nonetheless complete and return OF-230, Application for Immigrant Visa and Alien Registration, Part I—Biographic Data, together with the required fee of $25, as provided in paragraph (a) of this section. The applicant shall also inform the consular officer that he or she intends to apply for adjustment of status rather than for an immigrant visa.

§ 43.17 Eligibility to receive a visa.

The eligibility for an applicant for a visa under section 132 of Public Law 101-649 shall be determined as provided in the Immigration and Nationality Act and in part 42 of this chapter except that such an applicant shall be deemed to be ineligible to receive a visa under section 212(a)(4) of the Immigration and Nationality Act, as amended, if he or she does not present to the consular officer a firm commitment for employment in the United States for a period of at least one year, as defined in § 43.12(b).

Dated: September 4, 1991.

Elizabeth M. Tamposi,

Assistant Secretary for Consular Affairs.

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DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 1478]

Registration for the AA-1 Immigrant Visa Program

ACTION; Notice of registration for the AA-1 Immigrant Visa Program.

This Notice provides information on the application procedure for the 40,000 immigrant visas to be made available in Fiscal Year 1992. This Notice is issued under section 132 of the Immigration Act of 1990, Public Law 101-649 which mandates the issuance of immigrant visas to natives of "Certain Adversely Affected Foreign States". Final regulations related to this Notice are being published simultaneously with this Notice elsewhere in this issue of the Federal Register.

Background to the AA-1 Immigrant Visa Program

Section 132 of the Immigration Act of 1990 provides 40,000 immigrant visas for each of fiscal years 1992, 1993, and 1994 to natives of thirty-four countries (except for Canada) from which immigration was previously identified as having been "adversely affected" by the act of October 3, 1965, Public Law 89-236. These countries were earlier entitled to participate in the NP-5 immigrant visa program established by section 314 of the Immigration Reform and Control Act of 1986. The AA-1 program will be identified by the visa symbol AA-1 and will be implemented during a period of 3 years, as specified by law.

Requirements for Registering in the AA-1 Program

Who Qualifies for Registration Under the AA-1 Program?

Natives (as that term is explained below) of the following countries are entitled to apply for AA-1 visas:

Albania	France	Gibraltar
Algeria	Guadeloupe	Hungary
Argentina	New Caledonia	Iceland
Austria	Germany	Indonesia
Belgium	Great Britain and Northern Ireland	Ireland
Czechoslovakia	Bermuda	Italy
Denmark	Lithuania	Japan
Estonia	Luxembourg	Latvia
Finland	Monaco	Liechtenstein
	Netherlands	Poland
	Norway	San Marino
		Sweden
		Switzerland
		Tunisia

How and When Will Applications for AA-1 Status Be Accepted?

The application period for registration for the 40,000 visas to be issued during FY-1992 (i.e., from October 1, 1991 through September 30, 1992) Will Begin at 00:01 a.m. (Washington, DC time) on Monday, October 14, 1991 and will end at 23:59 on Sunday, October 20, 1991.

Mailing Address for Applications

Applications will be sent to: AA-1 Program, P.O. Box 60000, Arlington, VA 22218-0001, U.S.A.

How Will Applications Be Registered?

Applications will be registered in the order of their arrival during the application period. The applications may be sent to the address above by regular mail or air mail, and may be mailed from within the United States or from abroad. Hand-delivered applications, telegrams, or applications sent by any means which require a receipt for delivery will NOT be eligible for registration. Applications received at the post office box before or after the application period or delivered to any other address will NOT be processed for registration.

Is There Additional Information Required on Envelope?

The country of which the applicant is a native must appear on the upper left hand corner of the envelope. Example: Italy

What Information Must Be Included On The Application For Registration?

Each application must be submitted on a sheet of paper containing the information listed below, typed or clearly printed (in the Roman alphabet) and in the following format:

1. *Applicant's Full Name.*

Last Name, First Name and Middle Name

2. *Applicant's Date and Place of Birth.*

Date: Day, Month, Year

Place: City/Town, District/County/Province, Country

3. *Name, Date and Place of Birth of Applicant's Spouse And Children, If Any.*

The spouse and child(ren) of an applicant who is registered for AA-1 status are automatically entitled to the same status; the spouse or child does NOT need to be born in one of the countries listed above. To obtain a visa on the basis of this derivative status, a child must be under 21 years of age and unmarried.

4. *Applicant's Mailing Address.*

The mailing address must be clear and complete, since it will be to that address that the notification letter for the persons who are registered will be sent.

5. *United States Consular Office to Which a Visa Registration Should Be Sent.*

Ordinarily, this will be the United States embassy or consulate in the applicant's country of residence; if in the United States, the applicant shall indicate the consular office in the country of previous residence outside the United States. It is to the office indicated in this item that the visa case for a registered applicant will be sent for processing.

Is There an Application Form?

There is no special application form. The request for registration may simply be a sheet of paper which provides the information specified above. Only One Application May Be Included In Each Envelope.

Size of Envelope?

The envelope in which each application is mailed should be Between 5 inches and 10½ inches (i.e., approximately 12.7 cm to 26.7 cm) In Length, and Between 3½ inches and 6½ inches (i.e., approximately 9 cm to 16.5 cm) In Width. This is necessary to assist the automated processing of the mail. While envelopes outside this size range will be accepted for processing, use of an odd-size envelope could adversely affect an applicant's chances.

Other Requirements?

There are no other requirements for submission of an application apart from what is specified above. There is no fee

for submission of an AA–1 registration request.

Frequently Asked Questions About the AA–1 Registration

How Is the Term "Native" Defined? Are There Any Bases Upon Which Persons Who Have Not Been Born in a Qualifying Country May Qualify for Registration?

For purposes of the AA–1 program, "native" means Both someone born within one of the countries listed above and someone entitled to be "charged" to such country under the provisions of section 202(b) of the Immigration and Nationality Act. Applicants for AA–1 registration can benefit from the standard rules of alternate chargeability for immigrants, e.g., an applicant may be charged to the country of birth of a spouse, a child can be charged to the country of birth of a parent, and an applicant born in a country of which neither parent was a native or a resident at the time of his/her birth may be charged to the country of birth of either parent. An applicant who claims the benefit of alternate chargeability must include a statement to that effect on the application for registration, and must show the country of alternate chargeability on the upper left hand corner of the envelope in which the registration request is mailed.

What If a Person's Birth Place Was in An "AA–1" Country at the time of Birth, But Due to Changes in Boundaries Is No Longer Within a Qualifying Country?

For a person to be considered to have been born in a qualifying country, the place of birth must be within the boundaries currently recognized by the United States.

How Will Cases Be Registered?

Cases will be registered in the Order in Which They Are Received during the application period, i.e., in the same manner as cases were registered for the NP–5 visa program. The first letter received after the start of the registration period will be the first case registered, the second letter received the second registration, etc. When a case has been registered, the applicant will immediately be sent a notification letter, which will provide appropriate visa application instructions. The registration will at the same time be forwarded to the consular office which will process the case; all subsequent visa processing information will be obtained by the applicant directly from the consular office at which the case is on file.

Will Applicants Who Are Not Registered Be Informed?

No, applicants who are not registered will receive no response to their registration request. Only those who are registered will be informed. All notification letters are expected to be sent within about two months of the end of the application period. Anyone who does not receive a letter during this period will know that his/her application has not been registered.

How Many Applicants Will Be Registered?

A total of about 50,000 persons will be registered; both principal applicants and their spouses and children who receive derivative status will be counted against this total. Since it is likely that some of the first 40,000 persons who are registered will not pursue their cases to visa issuance, this larger figure should ensure use of all AA–1 numbers, but it also risks some registrants being left out. All applicants who are registered will be informed promptly of their place on the list. Each month visas will be issued, in chronological order of registration, to those applicants who are ready for visa issuance during that month. Once the total of 40,000 visas has been issued, the program for the year will end. Registered applicants who wish to receive visas must be prepared to act promptly on their cases.

The law specifies that at least 40% (i.e., 16,000) of each year's AA–1 visas are to be made available to applicants from the country of greatest NP–5 visa issuance (i.e., Ireland, which received about 41% of NP–5 visas). Thus, at least 40% of the persons registered for AA–1 visas must be natives of Ireland.

Is Each Applicant Limited to Only One Application for AA–1 Registration?

The law does not limit the number of copies of the AA–1 registration application which any person may submit; only the first request received from an individual during the application period will be registered. Photocopies of the sheet with application information are acceptable.

May a Husband and a Wife Each Submit Separate Applications?

Yes; if either is registered, the other would be entitled to derivative status.

May Children Apply for Registration Separately From Their Parents?

Children are not ineligible to apply for registration, but the requirement of a firm commitment of employment for each principal applicant will effectively disqualify anyone below the legal working age from actually receiving a visa. In any event, parents cannot derive status from the registration of a child, but a child (under 21 years of age and unmarried) is automatically included in a parent's registration.

May Persons Who Are in the United States Apply for Registration?

Yes, an applicant may be in the U.S. or in another country, and the application may be mailed in the U.S. or abroad.

Must Each Applicant Submit His/Her Own Request, or May Someone Act on Behalf of an Applicant?

Applicants may prepare and submit their own requests for registration, or have someone act on their behalf. There is no requirement that an applicant sign the registration request. Only one notification letter will be sent for each case registered, to the address provided on the application.

Must an Offer of Employment in the United States Be Submitted Along With the Request for AA–1 Registration?

No, an offer of employment should NOT be submitted as part of the registration application. Applicants who are registered for AA–1 status will need to present an employment offer at the time of visa issuance, however.

Must the Offer of Employment Required at the Time of Visa Processing Under This Provision Be Full-Time? Must It Be One Job, or Will Offers of Two Part-Time Jobs Suffice? Who May Provide an Offer of Employment? Can Self-Employed Persons Qualify for Registration?

Applicants must submit evidence of a commitment for FULL-TIME employment in the United States. Two or more part-time jobs will meet this requirement if, taken together, they constitute full-time employment, as long as the applicant submits letters from each employer supporting the job offer. The offer may come from a business or any other institution or organization in the United States, or from a private individual. Evidence of existing self-employment in the United States CAN meet the offer of employment requirement; a plan to create one's own business in the future, even in the immediate future, would NOT qualify, however.

Will There Be Any Special Fee for Registration in the AA–1 Category?

There is no fee for submitting a request for registration, and no fee should be included with the letter sent

to the post office box indicated above. There will be a special fee of U.S.$25.00 per case registered, however, to cover the cost of processing the AA–1 registrations. This fee will be collected by the consular office to which the case is sent for processing, when the applicant responds to the registration notification letter.

Are AA–1 Applicants Specially Entitled To Apply for a Waiver of Any of the Grounds of Visa Ineligibility?

The law states that, for AA–1 visa applicants, the Immigration and Naturalization Service shall waive the ground of visa ineligibility based on misrepresentation on an application for a visa or for entry into the U.S. (section 212(a)(6)(C), previously section 212(a)(19)), unless there is a finding that such waiver is not in the national interest. Also, the requirement for a labor certification—section 212(a)(5)(A)—does not apply. In all other respects, persons registered under the AA–1 program must meet the standard eligibility requirements before a visa can be issued.

May Applicants Who Are Already Registered for an Immigrant Visa in Another Category Apply for Registration in the AA–1 Category?

Yes, such persons may apply for AA–1 status as well.

How Long Do Applicants Who Are Registered on the Basis of This Application Period Remain Entitled To Apply for Visas in the AA–1 Category?

Under the law, persons registered following the 1991 AA–1 application period are entitled to apply for visa issuance only during fiscal year 1992, i.e., from October 1991 through December 1992. There is no carry-over of benefit into another year for persons who are registered but who do not obtain visas during FY 1992. A separate application period must be held for each year's AA–1 visas prior to the start of the respective fiscal year. Applicants who are registered for AA–1 visas should pursue their visa cases as expeditiously as possible. Fiscal year 1992 visa issuance will end when 40,000 visas are issued; this could occur before September 1992. There is no restriction on a person's applying for AA–1 status during each of the three application periods which will be held.

As indicated above, the regulations pertaining to this Notice are being published in this issue of the **Federal Register**, and contain detailed information regarding the AA–1 program.

Dated: September 4, 1991.

Elizabeth M. Tamposi,

Assistant Secretary for Consular Affairs.

[FR Doc. 91–21544 Filed 9–6–91; 8:45 am]

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CFR CHECKLIS.

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

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4	15.00	Jan. 1, 1991
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Subscription (mailed as issued)	188.00	1991

Title	Price	Revision Date
Individual copies	2.00	1991

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

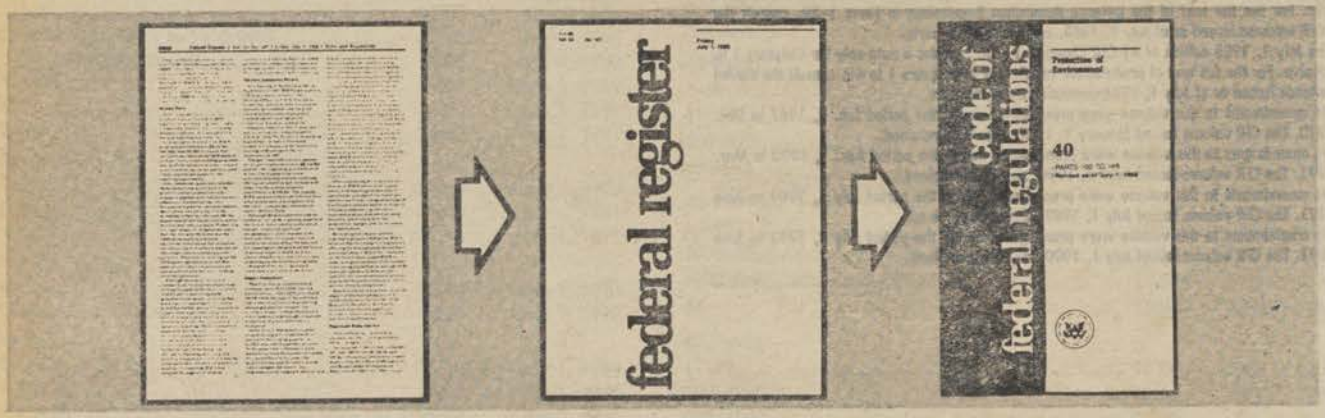
[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1991. The CFR volume issued July 1, 1989, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1990 to June 30, 1991. The CFR volume issued July 1, 1990, should be retained.

The Federal Register

Regulations appear as agency documents which are published daily in the **Federal Register** and codified annually in the **Code of Federal Regulations**



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